

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 334

HOUSE BILL 2223

AN ACT

AMENDING SECTIONS 8-201, 8-202 AND 8-382, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 3, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-420; AMENDING SECTIONS 13-206, 13-603 AND 13-604.01, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-703.02; AMENDING SECTIONS 13-1501, 13-2501, 13-2923, 13-3401, 13-3406 AND 13-3407, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3506.01, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2001, CHAPTER 94, SECTION 3; AMENDING SECTIONS 13-3551, 13-3553 AND 13-3554, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3601, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 32, SECTION 7, CHAPTER 42, SECTION 1 AND CHAPTER 361, SECTION 3; AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 370, SECTION 1; AMENDING TITLE 13, CHAPTER 38, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 31; AMENDING SECTIONS 13-4401 AND 13-4416, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4439; AMENDING SECTIONS 15-712, 22-372, 23-1501 AND 31-403, ARIZONA REVISED STATUTES; AMENDING LAWS 2000, CHAPTER 42, SECTION 6; RELATING TO CRIMES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-201, Arizona Revised Statutes, is amended to
3 read:

4 8-201. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Abandoned" means the failure of the parent to provide reasonable
7 support and to maintain regular contact with the child, including providing
8 normal supervision. Abandoned includes a judicial finding that a parent has
9 made only minimal efforts to support and communicate with the child. Failure
10 to maintain a normal parental relationship with the child without just cause
11 for a period of six months shall constitute prima facie evidence of
12 abandonment.

13 2. "Abuse" means the infliction or allowing of physical injury,
14 impairment of bodily function or disfigurement or the infliction of or
15 allowing another person to cause serious emotional damage as evidenced by
16 severe anxiety, depression, withdrawal or untoward aggressive behavior and
17 which emotional damage is diagnosed by a medical doctor or psychologist
18 pursuant to section 8-821 and which is caused by the acts or omissions of an
19 individual having care, custody and control of a child. Abuse shall include
20 inflicting or allowing sexual abuse pursuant to section 13-1404, sexual
21 conduct with a minor pursuant to section 13-1405, sexual assault pursuant to
22 section 13-1406, molestation of a child pursuant to section 13-1410,
23 commercial sexual exploitation of a minor pursuant to section 13-3552, sexual
24 exploitation of a minor pursuant to section 13-3553, incest pursuant to
25 section 13-3608 or child prostitution pursuant to section 13-3212.

26 3. "Adult" means a person who is eighteen years of age or older.

27 4. "Adult court" means the appropriate justice court, municipal court
28 or criminal division of the superior court that has jurisdiction to hear
29 proceedings concerning offenses committed by juveniles as provided in
30 sections 8-327 and 13-501.

31 5. "Award" or "commit" means to assign legal custody.

32 6. "Child", "youth" or "juvenile" means an individual who is under the
33 age of eighteen years.

34 7. "Complaint" means a written statement of the essential facts
35 constituting a public offense that is ANY OF THE FOLLOWING:

36 (a) Made on an oath before a judge or commissioner of the superior
37 court or an authorized juvenile hearing officer.

38 (b) ~~or that is~~ Made pursuant to section 13-3903.

39 (c) ACCOMPANIED BY AN AFFIDAVIT OF A LAW ENFORCEMENT OFFICER OR
40 EMPLOYEE THAT SWEARS ON INFORMATION AND BELIEF TO THE ACCURACY OF THE
41 COMPLAINT PURSUANT TO SECTION 13-4261.

42 8. "Custodian" means a person, other than a parent or legal guardian,
43 who stands in loco parentis to the child or a person to whom legal custody
44 of the child has been given by order of the juvenile court.

1 9. "Delinquency hearing" means a proceeding in the juvenile court to
2 determine whether a juvenile has committed a specific delinquent act as set
3 forth in a petition.

4 10. "Delinquent act" means an act by a juvenile which if committed by
5 an adult would be a criminal offense or a petty offense, a violation of any
6 law of this state, or of another state if the act occurred in that state, or
7 a law of the United States, or a violation of any law which can only be
8 violated by a minor and which has been designated as a delinquent offense,
9 or any ordinance of a city, county or political subdivision of this state
10 defining crime. Delinquent act does not include an offense under section
11 13-501, subsection A or B if the offense is filed in adult court. Any
12 juvenile who is prosecuted as an adult or who is remanded for prosecution as
13 an adult shall not be adjudicated as a delinquent juvenile for the same
14 offense.

15 11. "Delinquent juvenile" means a child who is adjudicated to have
16 committed a delinquent act.

17 12. "Department" means the department of economic security.

18 13. "Dependent child":

19 (a) Means a child who is adjudicated to be:

20 (i) In need of proper and effective parental care and control and who
21 has no parent or guardian, or one who has no parent or guardian willing to
22 exercise or capable of exercising such care and control.

23 (ii) Destitute or who is not provided with the necessities of life,
24 including adequate food, clothing, shelter or medical care, or whose home is
25 unfit by reason of abuse, neglect, cruelty or depravity by a parent, a
26 guardian, or any other person having custody or care of the child.

27 (iii) Under the age of eight years and who is found to have committed
28 an act that would result in adjudication as a delinquent juvenile or
29 incorrigible child if committed by an older juvenile or child.

30 (iv) Incompetent or not restorable to competency and who is alleged
31 to have committed a serious offense as defined in section 13-604.

32 (b) Does not include a child who in good faith is being furnished
33 Christian Science treatment by a duly accredited practitioner if none of the
34 circumstances described in subdivision (a) of this paragraph exists.

35 14. "Detention" means the temporary confinement of a juvenile who
36 requires secure care in a physically restricting facility that is completely
37 surrounded by a locked and physically secure barrier with restricted ingress
38 and egress for the protection of the juvenile or the community pending court
39 disposition or as a condition of probation.

40 15. "Incorrigible child" means a child who:

41 (a) Is adjudicated as a child who refuses to obey the reasonable and
42 proper orders or directions of a parent, guardian or custodian and who is
43 beyond the control of such person.

44 (b) Is habitually truant from school as defined in section 15-803,
45 subsection C.

1 (c) Is a runaway from the child's home or parent, guardian or
2 custodian.

3 (d) Habitually behaves in such a manner as to injure or endanger the
4 morals or health of self or others.

5 (e) Commits any act constituting an offense which can only be
6 committed by a minor and which is not designated as a delinquent act.

7 (f) Fails to obey any lawful order of a court of competent
8 jurisdiction given in a noncriminal action.

9 16. "Independent living program" includes a residential program with
10 supervision of less than twenty-four hours a day.

11 17. "Juvenile court" means the juvenile division of the superior court
12 when exercising its jurisdiction over children in any proceeding relating to
13 delinquency, dependency or incorrigibility.

14 18. "Law enforcement officer" means a peace officer, sheriff, deputy
15 sheriff, municipal police officer or constable.

16 19. "Medical director of a mental health agency" means a psychiatrist,
17 or licensed physician experienced in psychiatric matters, who is designated
18 in writing by the governing body of the agency as the person in charge of the
19 medical services of the agency, or a psychiatrist designated by the governing
20 body to act for the director. The term includes the superintendent of the
21 state hospital.

22 20. "Mental health agency" means any private or public facility which
23 is licensed by this state as a mental health treatment agency, a psychiatric
24 hospital, a psychiatric unit of a general hospital or a residential treatment
25 center for emotionally disturbed children and which utilizes secure settings
26 or mechanical restraints.

27 21. "Neglect" or "neglected" means the inability or unwillingness of
28 a parent, guardian or custodian of a child to provide that child with
29 supervision, food, clothing, shelter or medical care if that inability or
30 unwillingness causes substantial risk of harm to the child's health or
31 welfare, except if the inability of a parent or guardian to provide services
32 to meet the needs of a child with a disability or chronic illness is solely
33 the result of the unavailability of reasonable services.

34 22. "Petition" means a written statement of the essential facts that
35 allege delinquency, incorrigibility or dependency.

36 23. "Protective supervision" means supervision ordered by the juvenile
37 court of children who are found to be dependent or incorrigible.

38 24. "Referral" means a report that is submitted to the juvenile court
39 and that alleges that a child is dependent or incorrigible or that a juvenile
40 has committed a delinquent or criminal act.

41 25. "Secure care" means confinement in a facility that is completely
42 surrounded by a locked and physically secure barrier with restricted ingress
43 and egress.

44 26. "Shelter care" means the temporary care of a child in any public
45 or private facility or home that is licensed by this state and that offers

1 a physically nonsecure environment that is characterized by the absence of
2 physically restricting construction or hardware and that provides the child
3 access to the surrounding community.

4 Sec. 2. Section 8-202, Arizona Revised Statutes, is amended to read:

5 8-202. Jurisdiction of juvenile court

6 A. The juvenile court has original jurisdiction over all delinquency
7 proceedings brought under the authority of this title.

8 B. The juvenile court has exclusive original jurisdiction over all
9 proceedings brought under the authority of this title except for delinquency
10 proceedings and proceedings brought pursuant to section 8-132.

11 C. The juvenile court may consolidate any matter, ~~other than~~ EXCEPT
12 THAT THE JUVENILE COURT SHALL NOT CONSOLIDATE ANY OF THE FOLLOWING:

13 1. A criminal proceeding, that is filed in another division of
14 superior court and that involves a child who is subject to the jurisdiction
15 of the juvenile court.

16 2. A DELINQUENCY PROCEEDING WITH ANY OTHER PROCEEDING THAT DOES NOT
17 INVOLVE DELINQUENCY, UNLESS THE JUVENILE DELINQUENCY ADJUDICATION PROCEEDING
18 IS NOT HEARD AT THE SAME TIME OR IN THE SAME HEARING AS A NONDELINQUENCY
19 PROCEEDING.

20 D. The juvenile court has jurisdiction of proceedings to obtain
21 judicial consent to the marriage, employment or enlistment in the armed
22 services of a child, if consent is required by law.

23 E. The juvenile court has jurisdiction over both civil traffic
24 violations and offenses listed in section 8-323, subsection B that are
25 committed within the county by persons under eighteen years of age unless the
26 presiding judge of the county declines jurisdiction of these cases. The
27 presiding judge of the county may decline jurisdiction of civil traffic
28 violations committed within the county by juveniles if the presiding judge
29 finds that the declination would promote the more efficient use of limited
30 judicial and law enforcement resources located within the county. If the
31 presiding judge declines jurisdiction, juvenile civil traffic violations
32 shall be processed, heard and disposed of in the same manner and with the
33 same penalties as adult civil traffic violations.

34 F. The orders of the juvenile court under the authority of this
35 chapter or chapter 3, 5 or 10 of this title take precedence over any order
36 of any other court of this state except the court of appeals and the supreme
37 court to the extent that they are inconsistent with orders of other courts.

38 G. Except as otherwise provided by law, jurisdiction of a child that
39 is obtained by the juvenile court in a proceeding under this chapter or
40 chapter 3, 5 or 10 of this title shall be retained by it, for the purposes
41 of implementing the orders made and filed in that proceeding, until the child
42 becomes eighteen years of age, unless terminated by order of the court before
43 the child's eighteenth birthday.

44 H. Persons who are under eighteen years of age shall be prosecuted in
45 the same manner as adults if either:

- 1 1. The juvenile court transfers jurisdiction pursuant to section
2 8-327.
- 3 2. The juvenile is charged as an adult with an offense listed in
4 section 13-501.
- 5 Sec. 3. Section 8-382, Arizona Revised Statutes, is amended to read:
6 8-382. Definitions
7 In this article, unless the context otherwise requires:
8 1. "Accused" means a juvenile who is referred to juvenile court for
9 committing a delinquent act.
- 10 2. "Appellate proceeding" means a review of a lower court's decision
11 before the state court of appeals, the state supreme court, a federal court
12 of appeals or the United States supreme court.
- 13 3. "Arrest" means the actual custodial restraint or temporary custody
14 of a person.
- 15 4. "Court" means the juvenile division of the superior court when
16 exercising its jurisdiction over children in any proceeding relating to
17 delinquency.
- 18 5. "Crime victim advocate" means a person who is employed or
19 authorized by a public entity or a private entity that receives public
20 funding primarily to provide counseling, treatment or other supportive
21 assistance to crime victims.
- 22 6. "Custodial agency" means any law enforcement officer or agency, a
23 sheriff, a county juvenile detention center, the department of juvenile
24 corrections or a secure mental health facility that has custody of a person
25 who is arrested or in custody for a delinquent or incorrigible offense.
- 26 7. "Delinquency proceeding" means any hearing, argument or other
27 matter that is scheduled or held by a juvenile court judge, commissioner or
28 hearing officer relating to an alleged or adjudicated delinquent offense.
- 29 8. "Delinquent" means a child who is adjudicated to have committed a
30 delinquent act.
- 31 9. "Delinquent act" means an act to which this article applies
32 pursuant to section 8-381.
- 33 10. "Detention hearing" means the accused's initial appearance before
34 the court to determine release prior to adjudication.
- 35 11. "Final disposition" means the ultimate termination of the
36 delinquency proceeding by a court, including dismissal, acquittal, transfer
37 to adult court or imposition of a disposition after an adjudication for a
38 delinquent offense.
- 39 12. "Immediate family" means a victim's spouse, parent, child, sibling,
40 grandparent or lawful guardian.
- 41 13. "Juvenile defendant" means a juvenile against whom a petition is
42 filed seeking to have the juvenile adjudicated delinquent.
- 43 14. "Lawful representative" means a person who is designated by the
44 victim or appointed by the court and who will act in the best interests of
45 the victim.

1 15. "Postadjudication release" means release on probation, intensive
2 probation, work furlough, community supervision or home detention, release
3 on conditional liberty pursuant to section 41-2818 by the department of
4 juvenile corrections or any other permanent, conditional or temporary release
5 from confinement, discharge or completion of commitment by the department of
6 juvenile corrections, a sheriff, a municipal jail, a juvenile detention
7 center, a residential treatment facility or a secure mental health facility.

8 16. "Postadjudication review hearing" means a hearing that is held in
9 open court and that involves a request by the juvenile for review of a
10 disposition.

11 17. "Postarrest release" means the discharge of the accused from
12 confinement.

13 18. "Release" means no longer in the custody of the custodial agency
14 and includes transfer from one custodial agency to another custodial agency.

15 19. "Rights" means any right granted to the victim by the laws of this
16 state.

17 20. "Victim" means a person against whom the delinquent act was
18 committed, or if the person is killed or incapacitated, the person's spouse,
19 parent, ~~child~~ IMMEDIATE FAMILY or other lawful representative, except if the
20 person is in custody for an offense or is the accused.

21 Sec. 4. Title 8, chapter 3, article 7, Arizona Revised Statutes, is
22 amended by adding section 8-420, to read:

23 8-420. Right to leave work; scheduled proceedings; employment
24 rights; nondiscrimination; confidentiality; definition

25 A. AN EMPLOYER WHO HAS FIFTY OR MORE EMPLOYEES FOR EACH WORKING DAY
26 IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR
27 YEAR, AND ANY AGENT OF THAT EMPLOYER, SHALL ALLOW AN EMPLOYEE WHO IS A VICTIM
28 OF A JUVENILE OFFENSE TO LEAVE WORK TO EXERCISE THE EMPLOYEE'S RIGHT TO BE
29 PRESENT AT A PROCEEDING PURSUANT TO SECTIONS 8-395, 8-400, 8-401, 8-402,
30 8-403, 8-405, 8-406 AND 8-415.

31 B. AN EMPLOYER MAY NOT DISMISS AN EMPLOYEE WHO IS A VICTIM OF A
32 JUVENILE OFFENSE BECAUSE THE EMPLOYEE EXERCISES THE RIGHT TO LEAVE WORK
33 PURSUANT TO SUBSECTION A OF THIS SECTION.

34 C. AN EMPLOYER IS NOT REQUIRED TO COMPENSATE AN EMPLOYEE WHO IS A
35 VICTIM OF A JUVENILE OFFENSE WHEN THE EMPLOYEE LEAVES WORK PURSUANT TO
36 SUBSECTION A OF THIS SECTION.

37 D. IF AN EMPLOYEE LEAVES WORK PURSUANT TO SUBSECTION A OF THIS
38 SECTION, THE EMPLOYEE MAY ELECT TO USE OR AN EMPLOYER MAY REQUIRE THE
39 EMPLOYEE TO USE THE EMPLOYEE'S ACCRUED PAID VACATION, PERSONAL LEAVE OR SICK
40 LEAVE.

41 E. AN EMPLOYEE WHO IS A VICTIM OF A JUVENILE OFFENSE SHALL NOT LOSE
42 SENIORITY OR PRECEDENCE WHILE ABSENT FROM EMPLOYMENT PURSUANT TO SUBSECTION
43 A OF THIS SECTION.

44 F. BEFORE AN EMPLOYEE MAY LEAVE WORK PURSUANT TO SUBSECTION A OF THIS
45 SECTION, THE EMPLOYEE SHALL DO ALL OF THE FOLLOWING:

1 1. PROVIDE THE EMPLOYER WITH A COPY OF THE FORM PROVIDED TO THE
2 EMPLOYEE BY THE LAW ENFORCEMENT AGENCY PURSUANT TO SECTION 8-386, SUBSECTION
3 A OR A COPY OF THE INFORMATION THE LAW ENFORCEMENT AGENCY PROVIDES TO THE
4 EMPLOYEE PURSUANT TO SECTION 8-386, SUBSECTION E.

5 2. IF APPLICABLE, GIVE THE EMPLOYER A COPY OF THE NOTICE OF EACH
6 SCHEDULED PROCEEDING THAT IS PROVIDED TO THE VICTIM BY THE AGENCY THAT IS
7 RESPONSIBLE FOR PROVIDING NOTICE TO THE VICTIM.

8 G. IT IS UNLAWFUL FOR AN EMPLOYER OR AN EMPLOYER'S AGENT TO REFUSE TO
9 HIRE OR EMPLOY, TO BAR OR TO DISCHARGE FROM EMPLOYMENT OR TO DISCRIMINATE
10 AGAINST AN INDIVIDUAL IN COMPENSATION OR OTHER TERMS, CONDITIONS OR
11 PRIVILEGES OF EMPLOYMENT BECAUSE THE INDIVIDUAL LEAVES WORK PURSUANT TO
12 SUBSECTION A OF THIS SECTION.

13 H. EMPLOYERS SHALL KEEP CONFIDENTIAL RECORDS REGARDING THE EMPLOYEE'S
14 LEAVE PURSUANT TO THIS SECTION.

15 I. AN EMPLOYER MAY LIMIT THE LEAVE PROVIDED UNDER THIS SECTION IF THE
16 EMPLOYEE'S LEAVE CREATES AN UNDUE HARDSHIP TO THE EMPLOYER'S BUSINESS.

17 J. THE PROSECUTOR SHALL INFORM THE VICTIM OF THE VICTIM'S RIGHTS
18 PURSUANT TO THIS SECTION. A VICTIM MAY NOTIFY THE PROSECUTOR IF EXERCISING
19 THE VICTIM'S RIGHT TO LEAVE UNDER THIS SECTION WOULD CREATE AN UNDUE HARDSHIP
20 FOR THE VICTIM'S EMPLOYER. THE PROSECUTOR SHALL COMMUNICATE THE NOTICE TO
21 THE COURT DURING THE SCHEDULING OF PROCEEDINGS WHERE THE VICTIM HAS THE RIGHT
22 TO BE PRESENT. THE COURT SHALL CONTINUE TO TAKE THE VICTIM'S SCHEDULE INTO
23 CONSIDERATION WHEN SCHEDULING A PROCEEDING PURSUANT TO SUBSECTION A OF THIS
24 SECTION.

25 K. FOR PURPOSES OF THIS SECTION, "UNDUE HARDSHIP" MEANS A SIGNIFICANT
26 DIFFICULTY AND EXPENSE TO A BUSINESS AND INCLUDES THE CONSIDERATION OF THE
27 SIZE OF THE EMPLOYER'S BUSINESS AND THE EMPLOYER'S CRITICAL NEED OF THE
28 EMPLOYEE.

29 Sec. 5. Section 13-206, Arizona Revised Statutes, is amended to read:

30 13-206. Entrapment

31 A. It is an affirmative defense to a criminal charge that the person
32 was entrapped. To claim entrapment, the person must admit by the person's
33 testimony or other evidence the substantial elements of the offense charged.

34 B. A person who asserts an entrapment defense has the burden of
35 proving the following by clear and convincing evidence:

36 1. The idea of committing the offense started with law enforcement
37 officers or their agents rather than with the person.

38 2. The law enforcement officers or their agents urged and induced the
39 person to commit the offense.

40 3. The person was not predisposed to commit the type of offense
41 charged before the law enforcement officers or their agents urged and induced
42 the person to commit the offense.

43 C. A person does not establish entrapment if the person was
44 predisposed to commit the offense and the law enforcement officers or their
45 agents merely provided the person with an opportunity to commit the offense.

1 It is not entrapment for law enforcement officers or their agents merely to
2 use a ruse or to conceal their identity. The conduct of law enforcement
3 officers and their agents may be considered in determining if a person has
4 proven entrapment.

5 ~~D. If a person raises an entrapment defense, the court shall instruct~~
6 ~~the jurors that the person has admitted the elements of the offense and that~~
7 ~~the only issue for their consideration is whether the person has proven the~~
8 ~~affirmative defense of entrapment by clear and convincing evidence.~~

9 Sec. 6. Section 13-603, Arizona Revised Statutes, is amended to read:

10 13-603. Authorized disposition of offenders

11 A. Every person convicted of any offense defined in this title or
12 defined outside this title shall be sentenced in accordance with this chapter
13 and chapters 7, 8 and 9 of this title unless otherwise provided by law.

14 B. If a person is convicted of an offense, the court, if authorized
15 by chapter 9 of this title, may suspend the imposition or execution of
16 sentence and grant such person a period of probation except as otherwise
17 provided by law. The sentence is tentative to the extent that it may be
18 altered or revoked in accordance with chapter 9 of this title, but for all
19 other purposes it is a final judgment of conviction.

20 C. If a person is convicted of an offense, the court shall require the
21 convicted person to make restitution to the person who is the victim of the
22 crime or to the immediate family of the victim if the victim has died, in the
23 full amount of the economic loss as determined by the court and in the manner
24 as determined by the court or the court's designee pursuant to chapter 8 of
25 this title. Restitution ordered pursuant to this subsection shall be paid to
26 the clerk of the court for disbursement to the victim and is a criminal
27 penalty for the purposes of a federal bankruptcy involving the person
28 convicted of an offense.

29 D. If the court imposes probation it may also impose a fine as
30 authorized by chapter 8 of this title.

31 E. If a person is convicted of an offense and not granted a period of
32 probation, or when probation is revoked, any of the following sentences may
33 be imposed:

34 1. A term of imprisonment authorized by this chapter or chapter 7 of
35 this title.

36 2. A fine authorized by chapter 8 of this title. The sentence is
37 tentative to the extent it may be modified or revoked in accordance with
38 chapter 8 of this title, but for all other purposes it is a final judgment
39 of conviction. If the conviction is of a class 2, 3 or 4 felony, the
40 sentence cannot consist solely of a fine.

41 3. Both imprisonment and a fine.

42 4. Intensive probation, subject to the provisions of chapter 9 of this
43 title.

44 5. Intensive probation, subject to the provisions of chapter 9 of this
45 title, and a fine.

1 6. A new term of probation or intensive probation.

2 F. If an enterprise is convicted of any offense, a fine may be imposed
3 as authorized by chapter 8 of this title.

4 G. If a person or an enterprise is convicted of any felony, the court
5 may, in addition to any other sentence authorized by law, order the
6 forfeiture, suspension or revocation of any charter, license, permit or prior
7 approval granted to such THE person or an enterprise by any department or
8 agency of the state or of any political subdivision.

9 H. A court authorized to pass sentence upon a person convicted of any
10 offense defined within or without this title shall have a duty to determine
11 and impose the punishment prescribed for such offense.

12 I. If a person is convicted of a felony offense and the court
13 sentences the person to a term of imprisonment, the court at the time of
14 sentencing shall impose on the convicted person a term of community
15 supervision. The term of community supervision shall be served consecutively
16 to the actual period of imprisonment if the person signs and agrees to abide
17 by conditions of supervision established by the state department of
18 corrections. Except pursuant to subsection J, the term of community
19 supervision imposed by the court shall be for a period equal to one day for
20 every seven days of the sentence or sentences imposed.

21 J. ~~The court shall round the term of community supervision imposed~~
22 ~~pursuant to subsection I. A term of community supervision shall only be~~
23 ~~given in increments of years or months. In calculating the term of community~~
24 ~~supervision, all fractions of the month may be increased or SHALL BE~~
25 ~~decreased to the nearest month, except for a class 5 or 6 felony which shall~~
26 ~~not be less than one month.~~

27 K. Notwithstanding subsection I, if the court sentences a person to
28 serve a consecutive term of probation immediately after the person serves a
29 term of imprisonment, the court may waive community supervision and order
30 that the person begin serving the term of probation upon the person's release
31 from confinement. The court may retroactively waive the term of community
32 supervision or that part remaining to be served if the community supervision
33 was imposed prior to the enactment of this section BEFORE JULY 21, 1997. If
34 the court waives community supervision, the term of probation imposed shall
35 be equal to or greater than the term of community supervision that would have
36 been imposed. If the court does not waive community supervision, the person
37 shall begin serving the term of probation after the person serves the term
38 of community supervision. The state department of corrections shall provide
39 reasonable notice to the probation department of the scheduled release of the
40 inmate from confinement by the department.

41 L. If at the time of sentencing the court is of the opinion that a
42 sentence that the law requires the court to impose is clearly excessive, the
43 court may enter a special order allowing the person sentenced to petition the
44 board of executive clemency for a commutation of sentence within ninety days
45 after the person is committed to the custody of the state department of

1 corrections. If the court enters a special order regarding commutation, the
2 court shall set forth in writing its specific reasons for concluding that the
3 sentence is clearly excessive. The court shall allow both the state and the
4 victim to submit a written statement on the matter. The court's order, and
5 reasons for its order, and the statements of the state and the victim shall
6 be sent to the board of executive clemency.

7 Sec. 7. Section 13-604.01, Arizona Revised Statutes, is amended to
8 read:

9 13-604.01. Dangerous crimes against children; sentences;
10 definitions

11 A. A person who is at least eighteen years of age and who stands
12 convicted of a dangerous crime against children in the first degree involving
13 sexual assault of a minor who is twelve years of age or younger or sexual
14 conduct with a minor who is twelve years of age or younger shall be sentenced
15 to life imprisonment and is not eligible for suspension of sentence,
16 probation, pardon or release from confinement on any basis except as
17 specifically authorized by section 31-233, subsection A or B until the person
18 has served thirty-five years or the sentence is commuted. This subsection
19 does not apply to masturbatory contact.

20 B. Except as otherwise provided in this section, a person who is at
21 least eighteen years of age or who has been tried as an adult and who stands
22 convicted of a dangerous crime against children in the first degree involving
23 attempted first degree murder of a minor who is under twelve years of age or
24 second degree murder of a minor who is under twelve years of age or sexual
25 assault of a minor who is under twelve years of age or sexual conduct with
26 a minor who is under twelve years of age may be sentenced to life
27 imprisonment and is not eligible for suspension of sentence, probation,
28 pardon or release from confinement on any basis except as specifically
29 authorized by section 31-233, subsection A or B until the person has served
30 thirty-five years or the sentence is commuted. If a life sentence is not
31 imposed pursuant to this subsection, the person shall be sentenced to a
32 presumptive term of imprisonment for twenty years.

33 C. Except as otherwise provided in this section, a person who is at
34 least eighteen years of age or who has been tried as an adult and who stands
35 convicted of a dangerous crime against children in the first degree involving
36 attempted first degree murder of a minor who is twelve, thirteen or fourteen
37 years of age, second degree murder of a minor who is twelve, thirteen or
38 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
39 fourteen years of age, taking a child for the purpose of prostitution, child
40 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
41 years of age or continuous sexual abuse of a child or involving or using
42 minors in drug offenses shall be sentenced to a presumptive term of
43 imprisonment for twenty years. If the convicted person has been previously
44 convicted of one predicate felony the person shall be sentenced to a
45 presumptive term of imprisonment for thirty years.

1 D. Except as otherwise provided in this section, a person who is at
2 least eighteen years of age or who has been tried as an adult and who stands
3 convicted of a dangerous crime against children in the first degree involving
4 aggravated assault, molestation of a child, commercial sexual exploitation
5 of a minor, sexual exploitation of a minor, child abuse or kidnapping shall
6 be sentenced to a presumptive term of imprisonment for seventeen years. If
7 the convicted person has been previously convicted of one predicate felony
8 the person shall be sentenced to a presumptive term of imprisonment for
9 twenty-eight years.

10 E. Except as otherwise provided in this section, a person who is at
11 least eighteen years of age or who has been tried as an adult and who stands
12 convicted of a dangerous crime against children involving sexual abuse under
13 section 13-1404 is guilty of a class 3 felony and shall be sentenced to a
14 presumptive term of imprisonment for five years, and unless the person has
15 previously been convicted of a predicate felony, the presumptive term may be
16 increased or decreased by up to two and one-half years pursuant to section
17 13-702, subsections C, D and E. If the person is sentenced to a term of
18 imprisonment the person is not eligible for release from confinement on any
19 basis except as specifically authorized by section 31-233, subsection A or
20 B until the sentence imposed by the court has been served, the person is
21 eligible for release pursuant to section 41-1604.07 or the sentence is
22 commuted. If the convicted person has been previously convicted of one
23 predicate felony the person shall be sentenced to a presumptive term of
24 imprisonment for fifteen years and is not eligible for suspension of
25 sentence, probation, pardon or release from confinement on any basis except
26 as specifically authorized by section 31-233, subsection A or B until the
27 sentence imposed by the court has been served, the person is eligible for
28 release pursuant to section 41-1604.07 or the sentence is commuted.

29 F. The presumptive sentences prescribed in subsections B, C and D of
30 this section or subsection E of this section if the person has previously
31 been convicted of a predicate felony may be increased or decreased by up to
32 seven years pursuant to the provisions of section 13-702, subsections B, C
33 and D.

34 G. Except as provided in subsection E of this section, a person
35 sentenced for a dangerous crime against children in the first degree pursuant
36 to this section is not eligible for suspension of sentence, probation,
37 pardon, or release from confinement on any basis except as specifically
38 authorized by section 31-233, subsection A or B until the sentence imposed
39 by the court has been served or commuted.

40 H. A person who stands convicted of any dangerous crime against
41 children in the first degree pursuant to subsection C or D of this section
42 having been previously convicted of two or more predicate felonies shall be
43 sentenced to life imprisonment and is not eligible for suspension of
44 sentence, probation, pardon or release from confinement on any basis except
45 as specifically authorized by section 31-233, subsection A or B until the

1 person has served not fewer than thirty-five years or the sentence is
2 commuted.

3 I. Notwithstanding chapter 10 of this title, a person who is at least
4 eighteen years of age or who has been tried as an adult and who stands
5 convicted of a dangerous crime against children in the second degree pursuant
6 to subsection C or D of this section OR LURING A MINOR FOR SEXUAL
7 EXPLOITATION PURSUANT TO SECTION 13-3554 is guilty of a class 3 felony and
8 shall be sentenced to a presumptive term of imprisonment for ten years. The
9 presumptive term may be increased or decreased by up to five years pursuant
10 to section 13-702, subsections B, C and D. If the person is sentenced to a
11 term of imprisonment the person is not eligible for release from confinement
12 on any basis except as specifically authorized by section 31-233, subsection
13 A or B until the person has served the sentence imposed by the court, the
14 person is eligible for release pursuant to section 41-1604.07 or the sentence
15 is commuted. A person who is convicted of any dangerous crime against
16 children in the second degree having been previously convicted of one or more
17 predicate felonies is not eligible for suspension of sentence, probation,
18 pardon or release from confinement on any basis except as specifically
19 authorized by section 31-233, subsection A or B until the sentence imposed
20 by the court has been served, the person is eligible for release pursuant to
21 section 41-1604.07 or the sentence is commuted.

22 J. Section 13-604, subsections M and O apply to the determination of
23 prior convictions.

24 K. The sentence imposed on a person by the court for a dangerous crime
25 against children under subsection D of this section involving child
26 molestation or sexual abuse pursuant to subsection E of this section may be
27 served concurrently with other sentences if the offense involved only one
28 victim. The sentence imposed on a person for any other dangerous crime
29 against children in the first or second degree shall be consecutive to any
30 other sentence imposed on the person at any time, including child molestation
31 and sexual abuse of the same victim.

32 L. In this section:

33 1. "Dangerous crime against children" means any of the following that
34 is committed against a minor who is under fifteen years of age:

35 (a) Second degree murder.

36 (b) Aggravated assault resulting in serious physical injury or
37 involving the discharge, use or threatening exhibition of a deadly weapon or
38 dangerous instrument.

39 (c) Sexual assault.

40 (d) Molestation of a child.

41 (e) Sexual conduct with a minor.

42 (f) Commercial sexual exploitation of a minor.

43 (g) Sexual exploitation of a minor.

44 (h) Child abuse as prescribed in section 13-3623, subsection A,
45 paragraph 1.

- 1 (i) Kidnapping.
- 2 (j) Sexual abuse.
- 3 (k) Taking a child for the purpose of prostitution as defined in
- 4 section 13-3206.
- 5 (l) Child prostitution as defined in section 13-3212.
- 6 (m) Involving or using minors in drug offenses.
- 7 (n) Continuous sexual abuse of a child.
- 8 (o) Attempted first degree murder.

9 A dangerous crime against children is in the first degree if it is a
10 completed offense and is in the second degree if it is a preparatory offense,
11 except attempted first degree murder is a dangerous crime against children
12 in the first degree.

13 2. "Predicate felony" means any felony involving child abuse pursuant
14 to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct
15 involving the intentional or knowing infliction of serious physical injury
16 or the discharge, use or threatening exhibition of a deadly weapon or
17 dangerous instrument, or a dangerous crime against children in the first or
18 second degree.

19 Sec. 8. Title 13, chapter 7, Arizona Revised Statutes, is amended by
20 adding section 13-703.02, to read:

21 13-703.02. Capital defendant prescreening evaluation for
22 competency and sanity

23 A. IF THE STATE FILES A NOTICE OF INTENT TO SEEK THE DEATH PENALTY,
24 UNLESS THE DEFENDANT OBJECTS, THE COURT SHALL APPOINT A PSYCHOLOGIST LICENSED
25 PURSUANT TO TITLE 32, CHAPTER 19.1 TO CONDUCT A PRESCREENING EVALUATION TO
26 DETERMINE IF REASONABLE GROUNDS EXIST TO CONDUCT ANOTHER EXAMINATION TO
27 DETERMINE THE FOLLOWING:

- 28 1. THE DEFENDANT'S COMPETENCY TO STAND TRIAL.
- 29 2. WHETHER THE DEFENDANT WAS SANE AT THE TIME THE DEFENDANT ALLEGEDLY
- 30 COMMITTED THE OFFENSE.

31 B. THE COURT MAY APPOINT SEPARATE EXPERTS TO CONDUCT EACH OF THE
32 EVALUATIONS ORDERED PURSUANT TO SUBSECTION A.

33 C. THE COURT SHALL SEAL A PSYCHOLOGIST'S REPORT, AND THE REPORT SHALL
34 ONLY BE AVAILABLE TO THE DEFENDANT. THE REPORT SHALL BE RELEASED ON THE
35 MOTION OF ANY PARTY IF THE DEFENDANT INTRODUCES THE REPORT IN THE PRESENT
36 CASE OR IS CONVICTED OF AN OFFENSE IN THE PRESENT CASE AND THE SENTENCE IS
37 FINAL.

38 D. IF THE PRESCREENING EVALUATION INDICATES THAT REASONABLE GROUNDS
39 EXIST TO CONDUCT ANOTHER EXAMINATION AS PRESCRIBED BY SUBSECTION A, THE COURT
40 SHALL TREAT THE PRESCREENING EVALUATION AS A PRELIMINARY EXAMINATION PURSUANT
41 TO RULE 11.2c OF THE RULES OF CRIMINAL PROCEDURE AND SHALL PROCEED IN
42 ACCORDANCE WITH RULE 11 OF THE RULES OF CRIMINAL PROCEDURE.

43 Sec. 9. Section 13-1501, Arizona Revised Statutes, is amended to read:
44 13-1501. Definitions

45 In this chapter, unless the context otherwise requires:

1 1. "Enter or remain unlawfully" means an act of a person who enters
2 or remains on premises when such person's intent for so entering or remaining
3 is not licensed, authorized or otherwise privileged except when the entry is
4 to commit theft of merchandise displayed for sale during normal business
5 hours, when the premises are open to the public and WHEN the person does not
6 enter any unauthorized areas of the premises.

7 2. "Entry" means the intrusion of any part of any instrument or any
8 part of a person's body inside the external boundaries of a structure or unit
9 of real property.

10 3. "Fenced commercial yard" means a unit of real property surrounded
11 completely by either fences, walls, buildings, or similar barriers or any
12 combination thereof, and used primarily for business operations or where
13 livestock, produce or other commercial items are located.

14 4. "Fenced residential yard" means a unit of real property immediately
15 surrounding or adjacent to a residential structure and enclosed by a fence,
16 wall, building or similar barrier, or any combination thereof.

17 5. "In the course of committing" means any acts performed by an
18 intruder from the moment of entry to and including flight from the scene of
19 a crime.

20 6. "Nonresidential structure" means any structure other than a
21 residential structure.

22 7. "Residential structure" means any structure, movable or immovable,
23 permanent or temporary, adapted for both human residence and lodging whether
24 occupied or not.

25 8. "Structure" means any building, object, vehicle, VENDING MACHINE,
26 railroad car or place with sides and a floor, separately securable from any
27 other structure attached to it and used for lodging, business,
28 transportation, recreation or storage.

29 9. "VENDING MACHINE" MEANS A MACHINE THAT DISPENSES MERCHANDISE OR
30 SERVICE THROUGH THE MEANS OF CURRENCY, COIN, TOKEN, CREDIT CARD OR OTHER
31 NONPERSONAL MEANS OF ACCEPTING PAYMENT FOR MERCHANDISE OR SERVICE RECEIVED.

32 Sec. 10. Section 13-2501, Arizona Revised Statutes, is amended to
33 read:

34 13-2501. Definitions

35 In this chapter, unless the context otherwise requires:

36 1. "Contraband" means any dangerous drug, narcotic drug, marijuana,
37 intoxicating liquor of any kind, deadly weapon, dangerous instrument,
38 explosive or other article whose use or possession would endanger the safety,
39 security or preservation of order in a correctional facility OR A JUVENILE
40 SECURE CARE FACILITY AS DEFINED BY SECTION 41-2801, or of any person therein
41 WITHIN A CORRECTIONAL OR JUVENILE SECURE CARE FACILITY.

42 2. "Correctional facility" means any place used for the confinement
43 or control of a person:

44 (a) Charged with or convicted of an offense; or

45 (b) Held for extradition; or

1 (c) Pursuant to an order of court for law enforcement
2 purposes. Lawful transportation or movement incident to correctional
3 facility confinement pursuant to this paragraph is within the control of a
4 correctional facility. However, for purposes of this chapter, being within
5 the control of a correctional facility does not include release on parole,
6 on community supervision, on probation or by other lawful authority upon the
7 condition of subsequent personal appearance at a designated place and time.

8 3. "Custody" means the imposition of actual or constructive restraint
9 pursuant to an on-site arrest or court order but does not include detention
10 in a correctional facility, juvenile detention center or state hospital.

11 4. "Escape" means departure from custody or from a juvenile secure
12 care facility as described in section 41-2816, a juvenile detention facility
13 or an adult correctional facility in which a person is held or detained with
14 knowledge that such departure is unpermitted or failure to return to custody
15 or detention following a temporary leave granted for a specific purpose or
16 for a limited period.

17 Sec. 11. Section 13-2923, Arizona Revised Statutes, is amended to
18 read:

19 13-2923. Stalking; classification; definitions

20 A. A person commits stalking if the person intentionally or knowingly
21 engages in a course of conduct that is directed toward another person and if
22 that conduct either:

23 1. Would cause a reasonable person to fear for the person's safety or
24 the safety of that person's immediate family member and that person in fact
25 fears for their safety or the safety of that person's immediate family
26 member.

27 2. Would cause a reasonable person to fear ~~physical injury to or death~~
28 of that person or that person's immediate family member and that person in
29 fact fears ~~physical injury to or death~~ of that person or that person's
30 immediate family member.

31 B. Stalking under subsection A, paragraph 1 of this section is a class
32 5 felony. Stalking under subsection A, paragraph 2 is a class 3 felony.

33 C. For the purposes of this section:

34 1. "Course of conduct" means maintaining visual or physical proximity
35 to a specific person or directing verbal, written or other threats, whether
36 express or implied, to a specific person on two or more occasions over a
37 period of time, however short, but does not include constitutionally
38 protected activity.

39 2. "Immediate family member" means a spouse, parent, child or sibling
40 or any other person who regularly resides in a person's household or resided
41 in a person's household within the past six months.

42 Sec. 12. Section 13-3401, Arizona Revised Statutes, is amended to
43 read:

44 13-3401. Definitions

45 In this chapter, unless the context otherwise requires:

1 1. "Administer" means to apply, inject or facilitate the inhalation
2 or ingestion of a substance to the body of a person.

3 2. "Amidone" means any substance identified chemically as
4 (4-4-diphenyl-6-dimethylamine-heptanone-3), or any salt of such substance,
5 by whatever trade name designated.

6 3. "Board" means the Arizona state board of pharmacy.

7 4. "Cannabis" means the following substances under whatever names they
8 may be designated:

9 (a) The resin extracted from any part of a plant of the genus
10 cannabis, and every compound, manufacture, salt, derivative, mixture or
11 preparation of such plant, its seeds or its resin. Cannabis does not include
12 oil or cake made from the seeds of such plant, any fiber, compound,
13 manufacture, salt, derivative, mixture or preparation of the mature stalks
14 of such plant except the resin extracted from the stalks or any fiber, oil
15 or cake or the sterilized seed of such plant which is incapable of
16 germination.

17 (b) Every compound, manufacture, salt, derivative, mixture or
18 preparation of such resin or tetrahydrocannabinol.

19 5. "Coca leaves" means cocaine, its optical isomers and any compound,
20 manufacture, salt, derivative, mixture or preparation of coca leaves, except
21 derivatives of coca leaves which do not contain cocaine, ecgonine or
22 substances from which cocaine or ecgonine may be synthesized or made.

23 6. "Dangerous drug" means the following by whatever official, common,
24 usual, chemical or trade name designated:

25 (a) Any material, compound, mixture or preparation which contains any
26 quantity of the following hallucinogenic substances and their salts, isomers
27 and salts of isomers, unless specifically excepted, whenever the existence
28 of such salts, isomers and salts of isomers is possible within the specific
29 chemical designation:

- 30 (i) 4-bromo-2, 5-dimethoxyamphetamine.
- 31 (ii) Bufotenine.
- 32 (iii) Diethyltryptamine.
- 33 (iv) 2, 5-dimethoxyamphetamine.
- 34 (v) Dimethyltryptamine.
- 35 (vi) 5-methoxy-3, 4-methylenedioxyamphetamine.
- 36 (vii) 4-methyl-2, 5-dimethoxyamphetamine.
- 37 (viii) Ibogaine.
- 38 (ix) Lysergic acid amide.
- 39 (x) Lysergic acid diethylamide.
- 40 (xi) Mescaline.
- 41 (xii) Methoxymethylenedioxyamphetamine (MMDA).
- 42 (xiii) Methylenedioxyamphetamine (MDA).
- 43 (xiv) 3,4-methylenedioxymethamphetamine.
- 44 (xv) 3,4-methylenedioxy-n-ethylamphetamine.
- 45 (xvi) N-ethyl-3-piperidyl benzilate (JB-318).

- 1 (xvii) N-hydroxy-3,4-methylenedioxyamphetamine.
- 2 (xviii) N-methyl-3-piperidyl benzilate (JB-336).
- 3 (xix) N-(1-phenylcyclohexyl) ethylamine (PCE).
- 4 (xx) Nabilone.
- 5 (xxi) 1-(1-phenylcyclohexyl) pyrrolidine (PHP).
- 6 (xxii) 1-(1-(2-thienyl)-cyclohexyl) piperidine (TCP).
- 7 (xxiii) 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine.
- 8 (xxiv) Para-methoxyamphetamine (PMA).
- 9 (xxv) Psilocybin.
- 10 (xxvi) Psilocyn.
- 11 (xxvii) Synhexyl.
- 12 (xxviii) Trimethoxyamphetamine (TMA).

13 (b) Any material, compound, mixture or preparation which contains any
14 quantity of the following substances and their salts, optical isomers, and
15 salts of optical isomers having a potential for abuse associated with a
16 stimulant effect on the central nervous system:

- 17 (i) Amphetamine.
- 18 (ii) Benzphetamine.
- 19 (iii) Cathine ((+)-norpseudoephedrine).
- 20 (iv) Chlorphentermine.
- 21 (v) Clortermine.
- 22 (vi) Diethylpropion.
- 23 (vii) Fencamfamin.
- 24 (viii) Fenethylline.
- 25 (ix) Fenproporex.
- 26 (x) Mazindol.
- 27 (xi) Mefenorex.
- 28 (xii) Methamphetamine.
- 29 (xiii) 4-methylaminorex.
- 30 (xiv) Methylphenidate.
- 31 (xv) N-ethylamphetamine.
- 32 (xvi) N,N-dimethylamphetamine.
- 33 (xvii) Pemoline.
- 34 (xviii) Phendimetrazine.
- 35 (xix) Phenmetrazine.
- 36 (xx) Phentermine.
- 37 (xxi) Pipradol.
- 38 (xxii) Propylhexedrine.
- 39 (xxiii) Pyrovalerone.
- 40 (xxiv) Spa ((-)-1-dimethylamino-1,2-diphenylethane).

41 (c) Any material, compound, mixture or preparation which contains any
42 quantity of the following substances having a potential for abuse associated
43 with a depressant effect on the central nervous system:

1 (i) Any substance which contains any quantity of a derivative of
2 barbituric acid, or any salt of a derivative of barbituric acid, unless
3 specifically excepted.

4 (ii) Alprazolam.

5 (iii) Bromazepam.

6 (iv) Camazepam.

7 (v) Chloral betaine.

8 (vi) Chloral hydrate.

9 (vii) Chlordiazepoxide.

10 (viii) Chlorhexadol.

11 (ix) Clobazam.

12 (x) Clonazepam.

13 (xi) Clorazepate.

14 (xii) Clotiazepam.

15 (xiii) Cloxazolam.

16 (xiv) Delorazepam.

17 (xv) Diazepam.

18 (xvi) Estazolam.

19 (xvii) Ethchlorvynol.

20 (xviii) Ethinamate.

21 (xix) Ethyl loflazepate.

22 (xx) Fenfluramine.

23 (xxi) Fludiazepam.

24 (xxii) Flunitrazepam.

25 (xxiii) Flurazepam.

26 (xxiv) Gamma hydroxy butyrate.

27 (xxv) Glutethimide.

28 (xxvi) Halazepam.

29 (xxvii) Haloxazolam.

30 (xxviii) Ketamine.

31 (xxix) Ketazolam.

32 (xxx) Loprazolam.

33 (xxxi) Lorazepam.

34 (xxxii) Lormetazepam.

35 (xxxiii) Lysergic acid.

36 (xxxiv) Mebutamate.

37 (xxxv) Mecloqualone.

38 (xxxvi) Medazepam.

39 (xxxvii) Meprobamate.

40 (xxxviii) Methaqualone.

41 (xxxix) Methypylon.

42 (xl) Midazolam.

43 (xli) Nimetazepam.

44 (xlii) Nitrazepam.

45 (xliii) Nordiazepam.

- 1 (xliv) Oxazepam.
- 2 (xlv) Oxazolam.
- 3 (xlvi) Paraldehyde.
- 4 (xlvii) Petrichloral.
- 5 (xlviii) Phencyclidine.
- 6 (xlix) Pinazepam.
- 7 (l) Prazepam.
- 8 (li) Scopolamine.
- 9 (lii) Sulfondiethylmethane.
- 10 (liii) Sulfonethylmethane.
- 11 (liv) Sulfonmethane.
- 12 (lv) Quazepam.
- 13 (lvi) Temazepam.
- 14 (lvii) Tetrazepam.
- 15 (lviii) Tiletamine.
- 16 (lix) Triazolam.
- 17 (lx) Zolazepam.
- 18 (d) Any material, compound, mixture or preparation which contains any
- 19 quantity of the following anabolic steroids and their salts, isomers or
- 20 esters:
 - 21 (i) Boldenone.
 - 22 (ii) Clostebol (4-Chlorotestosterone).
 - 23 (iii) Dehydrochloromethyltestosterone.
 - 24 (iv) Drostanolone.
 - 25 (v) Ethylestrenol.
 - 26 (vi) Fluoxymesterone.
 - 27 (vii) Formebolone (Formebolone).
 - 28 (viii) Mesterolone.
 - 29 (ix) Methandriol.
 - 30 (x) Methandrostenolone (Methandienone).
 - 31 (xi) Methenolone.
 - 32 (xii) Methyltestosterone.
 - 33 (xiii) Mibolerone.
 - 34 (xiv) Nandrolone.
 - 35 (xv) Norethandrolon.
 - 36 (xvi) Oxandrolone.
 - 37 (xvii) Oxymesterone.
 - 38 (xviii) Oxymetholone.
 - 39 (xix) Stanolone (4-Dihydrotestosterone).
 - 40 (xx) Stanozolol.
 - 41 (xxi) Testolactone.
 - 42 (xxii) Testosterone.
 - 43 (xxiii) Trenbolone.
- 44 7. "Deliver" means the actual, constructive or attempted exchange from
- 45 one person to another, whether or not there is an agency relationship.

1 8. "Director" means the director of the department of health services.

2 9. "Dispense" means distribute, leave with, give away, dispose of or
3 deliver.

4 10. "Drug court program" means a program that is established pursuant
5 to section 13-3422 by the presiding judge of the superior court in
6 cooperation with the county attorney in a county for the purpose of
7 prosecuting, adjudicating and treating drug dependent persons who meet the
8 criteria and guidelines for entry into the program that are developed and
9 agreed on by the presiding judge and the prosecutor.

10 11. "Drug dependent person" means a person who is using a substance
11 that is listed in paragraph 6, 19, 20, 21 or 28 of this section and who is
12 in a state of psychological or physical dependence, or both, arising from the
13 use of that substance.

14 12. "Federal act" has the same meaning prescribed in section 32-1901.

15 13. "Isoamidone" means any substance identified chemically as
16 (4-4-diphenyl-5-methyl-6-dimethylamino-hexanone-3), or any salt of such
17 substance, by whatever trade name designated.

18 14. "Isonipeccaine" means any substance identified chemically as
19 (1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester), or any salt of
20 such substance, by whatever trade name designated.

21 15. "Ketobemidone" means any substance identified chemically as
22 (4-(3-hydroxyphenyl)-1-methyl-4-piperidylethyl ketone hydrochloride), or any
23 salt of such substance, by whatever trade name designated.

24 16. "Licensed" or "permitted" means authorized by the laws of this
25 state to do certain things.

26 17. "Manufacture" means produce, prepare, propagate, compound, mix or
27 process, directly or indirectly, by extraction from substances of natural
28 origin or independently by means of chemical synthesis, or by a combination
29 of extraction and chemical synthesis. Manufacture includes any packaging or
30 repackaging or labeling or relabeling of containers. Manufacture does not
31 include any producing, preparing, propagating, compounding, mixing,
32 processing, packaging or labeling done in conformity with applicable state
33 and local laws and rules by a licensed practitioner incident to and in the
34 course of his licensed practice.

35 18. "Manufacturer" means a person who manufactures a narcotic or
36 dangerous drug or other substance controlled by this chapter.

37 19. "Marijuana" means all parts of any plant of the genus cannabis,
38 from which the resin has not been extracted, whether growing or not, and the
39 seeds of such plant. Marijuana does not include the mature stalks of such
40 plant or the sterilized seed of such plant which is incapable of germination.

41 20. "Narcotic drugs" means the following, whether of natural or
42 synthetic origin and any substance neither chemically nor physically
43 distinguishable from them:

44 (a) Acetyl-alpha-methylfentanyl.

45 (b) Acetylmethadol.

- 1 (c) Alfentanil.
- 2 (d) Allylprodine.
- 3 (e) Alphacetylmethadol.
- 4 (f) Alphameprodine.
- 5 (g) Alphamethadol.
- 6 (h) Alpha-methylfentanyl.
- 7 (i) Alpha-methylthiofentanyl.
- 8 (j) Alphaprodine.
- 9 (k) Amidone (methadone).
- 10 (l) Anileridine.
- 11 (m) Benzethidine.
- 12 (n) Benzylfentanyl.
- 13 (o) Betacetylmethadol.
- 14 (p) Beta-hydroxyfentanyl.
- 15 (q) Beta-hydroxy-3-methylfentanyl.
- 16 (r) Betameprodine.
- 17 (s) Betamethadol.
- 18 (t) Betaprodine.
- 19 (u) Bezitramide.
- 20 (v) Buprenorphine and its salts.
- 21 (w) Cannabis.
- 22 (x) Carfentanil.
- 23 (y) Clonitazene.
- 24 (z) Coca leaves.
- 25 (aa) Dextromoramide.
- 26 (bb) Dextropropoxyphene.
- 27 (cc) Diampromide.
- 28 (dd) Diethylthiambutene.
- 29 (ee) Difenoquin.
- 30 (ff) Dihydrocodeine.
- 31 (gg) Dimenoxadol.
- 32 (hh) Dimepheptanol.
- 33 (ii) Dimethylthiambutene.
- 34 (jj) Dioxaphetyl butyrate.
- 35 (kk) Diphenoxylate.
- 36 (ll) Dipipanone.
- 37 (mm) Ethylmethylthiambutene.
- 38 (nn) Etonitazene.
- 39 (oo) Etoxadine.
- 40 (pp) Fentanyl.
- 41 (qq) Furethidine.
- 42 (rr) Hydroxypethidine.
- 43 (ss) Isoamidone (isomethadone).
- 44 (tt) Isonipocaine (meperidine).
- 45 (uu) Ketohemidone.

- 1 (vv) Levomethorphan.
- 2 (ww) Levomoramide.
- 3 (xx) Levophenacymorphan.
- 4 (yy) Levorphanol.
- 5 (zz) Metazocine.
- 6 (aaa) 3-methylfentanyl.
- 7 (bbb) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
- 8 (ccc) 3-Methylthiofentanyl.
- 9 (ddd) Morpheridine.
- 10 (eee) Noracymethadol.
- 11 (fff) Norlevorphanol.
- 12 (ggg) Normethadone.
- 13 (hhh) Norpipanone.
- 14 (iii) Opium.
- 15 (jjj) Para-fluorofentanyl.
- 16 (kkk) Pentazocine.
- 17 (lll) Phenadoxone.
- 18 (mmm) Phenampromide.
- 19 (nnn) Phenazocine.
- 20 (ooo) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
- 21 (ppp) Phenomorphan.
- 22 (qqq) Phenoperidine.
- 23 (rrr) Piminodine.
- 24 (sss) Piritramide.
- 25 (ttt) Proheptazine.
- 26 (uuu) Properidine.
- 27 (vvv) Propiram.
- 28 (www) Racemethorphan.
- 29 (xxx) Racemoramide.
- 30 (yyy) Racemorphan.
- 31 (zzz) Sufentanil.
- 32 (aaaa) Thenylfentanyl.
- 33 (bbbb) Thiofentanyl.
- 34 (cccc) Tilidine.
- 35 (dddd) Trimeperidine.

21. "Opium" means any compound, manufacture, salt, isomer, salt of isomer, derivative, mixture or preparation of the following, but does not include apomorphine or any of its salts:

- 39 (a) Acetorphine.
- 40 (b) Acetyldihydrocodeine.
- 41 (c) Benzylmorphine.
- 42 (d) Codeine.
- 43 (e) Codeine methylbromide.
- 44 (f) Codeine-n-oxide.
- 45 (g) Cyprenorphine.

- 1 (h) Desomorphine.
- 2 (i) Dihydromorphine.
- 3 (j) Drotebanol.
- 4 (k) Ethylmorphine.
- 5 (l) Etorphine.
- 6 (m) Heroin.
- 7 (n) Hydrocodone.
- 8 (o) Hydromorphenol.
- 9 (p) Hydromorphone.
- 10 (q) Methyldesorphine.
- 11 (r) Methyldihydromorphine.
- 12 (s) Metopon.
- 13 (t) Morphine.
- 14 (u) Morphine methylbromide.
- 15 (v) Morphine methylsulfonate.
- 16 (w) Morphine-n-oxide.
- 17 (x) Myrophine.
- 18 (y) Nalorphine.
- 19 (z) Nicocodeine.
- 20 (aa) Nicomorphine.
- 21 (bb) Normorphine.
- 22 (cc) Oxycodone.
- 23 (dd) Oxymorphone.
- 24 (ee) Pholcodine.
- 25 (ff) Thebacon.
- 26 (gg) Thebaine.

27 22. "Ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or
28 phenylpropanolamine product" means a product that contains ephedrine,
29 pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is
30 all of the following:

- 31 (a) Approved for sale under the federal act.
- 32 (b) Labeled, advertised and marketed only for an indication that is
33 approved by the federal food and drug administration.
- 34 (c) Either:
 - 35 (i) A nonliquid that is sold in package sizes of not more than three
36 grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or
37 phenylpropanolamine and that is packaged in blister packs containing not more
38 than two dosage units or, if the use of blister packs is technically
39 infeasible, that is packaged in unit dose packets or pouches.
 - 40 (ii) A liquid that is sold in package sizes of not more than three
41 grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or
42 phenylpropanolamine.

43 23. "Peyote" means any part of a plant of the genus *lophophora*, known
44 as the mescal button.

1 24. "Pharmacy" means a licensed business where drugs are compounded or
2 dispensed by a licensed pharmacist.

3 25. "Practitioner" means a person licensed to prescribe and administer
4 drugs.

5 26. "Precursor chemical I" means any material, compound, mixture or
6 preparation which contains any quantity of the following substances and their
7 salts, optical isomers or salts of optical isomers:

8 (a) N-acetylanthranilic acid.

9 (b) Anthranilic acid.

10 (c) Ephedrine.

11 (d) Ergotamine.

12 (e) Isosafrole.

13 (f) Lysergic acid.

14 (g) Methylamine.

15 (h) N-ethylephedrine.

16 (i) N-ethylpseudoephedrine.

17 (j) N-methylephedrine.

18 (k) N-methylpseudoephedrine.

19 (l) Norephedrine.

20 (m) (-)-Norpseudoephedrine.

21 (n) Phenylacetic acid.

22 (o) Phenylpropanolamine.

23 (p) Piperidine.

24 (q) Pseudoephedrine.

25 27. "Precursor chemical II" means any material, compound, mixture or
26 preparation which contains any quantity of the following substances and their
27 salts, optical isomers or salts of optical isomers:

28 (a) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

29 (b) 4-cyano-1-methyl-4-phenylpiperidine.

30 (c) Chlorephedrine.

31 (d) Chlorpseudoephedrine.

32 (e) Ethyl-4-phenylpiperidine-4-carboxylate.

33 (f) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

34 (g) 1-methyl-4-phenylpiperidine-4-carboxylic acid.

35 (h) N-formyl amphetamine.

36 (i) N-formyl methamphetamine.

37 (j) Phenyl-2-propanone.

38 (k) 1-piperidinocyclohexane carbonitrile.

39 (l) 1-pyrrolidinocyclohexane carbonitrile.

40 28. "Prescription-only drug" does not include a dangerous drug or
41 narcotic drug but means:

42 (a) Any drug which because of its toxicity or other potentiality for
43 harmful effect, or the method of its use, or the collateral measures
44 necessary to its use, is not generally recognized among experts, qualified

1 by scientific training and experience to evaluate its safety and efficacy,
2 as safe for use except by or under the supervision of a medical practitioner.

3 (b) Any drug that is limited by an approved new drug application under
4 the federal act or section 32-1962 to use under the supervision of a medical
5 practitioner.

6 (c) Every potentially harmful drug, the labeling of which does not
7 bear or contain full and adequate directions for use by the consumer.

8 (d) Any drug required by the federal act to bear on its label the
9 legend "Caution: Federal law prohibits dispensing without prescription" or
10 "RX only".

11 29. "Produce" means grow, plant, cultivate, harvest, dry, process or
12 prepare for sale.

13 30. "Regulated chemical" means the following substances in bulk form
14 that are not a useful part of an otherwise lawful product:

- 15 (a) Acetic anhydride.
- 16 (b) Hypophosphorous acid.
- 17 (c) Iodine.
- 18 (d) Sodium acetate.
- 19 (e) Red phosphorus.
- 20 (f) GAMMA BUTYROLACTONE (GBL).
- 21 (g) 1,4-BUTANEDIOL.
- 22 (h) BUTYROLACTONE.
- 23 (i) 1,2 BUTANOLIDE.
- 24 (j) 2-OXANALONE.
- 25 (k) TETRAHYDRO-2-FURANONE.
- 26 (l) DIHYDRO-2(3H)-FURANONE.
- 27 (m) TETRAMETHYLENE GLYCOL.

28 31. "Retailer" means either:

29 (a) A person other than a practitioner who sells any precursor
30 chemical or regulated chemical to another person for purposes of consumption
31 and not resale, whether or not the person possesses a permit issued pursuant
32 to title 32, chapter 18.

33 (b) A person other than a manufacturer or wholesaler who purchases,
34 receives or acquires more than twenty-four grams of a precursor chemical.

35 32. "Sale" or "sell" means an exchange for anything of value or
36 advantage, present or prospective.

37 33. "Sale for personal use" means the retail sale for a legitimate
38 medical use in a single transaction to an individual customer, to an employer
39 for dispensing to employees from first aid kits or medicine chests or to a
40 school for administration pursuant to section 15-344.

41 34. "Scientific purpose" means research, teaching or chemical analysis.

42 35. "Suspicious transaction" means a transaction to which any of the
43 following applies:

- 44 (a) A report is required under the federal act.

1 (b) The circumstances would lead a reasonable person to believe that
2 any person is attempting to possess a precursor chemical or regulated
3 chemical for the purpose of unlawful manufacture of a dangerous drug or
4 narcotic drug, based on such factors as the amount involved, the method of
5 payment, the method of delivery and any past dealings with any participant.

6 (c) The transaction involves payment for precursor or regulated
7 chemicals in cash or money orders in a total amount of more than two hundred
8 dollars.

9 (d) The transaction involves a sale, a transfer or furnishing to a
10 retailer for resale without a prescription of ephedrine, pseudoephedrine,
11 (-)-norpseudoephedrine or phenylpropanolamine that is not an ordinary
12 ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine
13 product.

14 36. "Threshold amount" means a weight, market value or other form of
15 measurement of an unlawful substance as follows:

16 (a) One gram of heroin.

17 (b) Nine grams of cocaine.

18 (c) Seven hundred fifty milligrams of cocaine base or hydrolyzed
19 cocaine.

20 (d) Four grams or 50 milliliters of PCP.

21 (e) Nine grams of methamphetamine, including methamphetamine in liquid
22 suspension.

23 (f) Nine grams of amphetamine, including amphetamine in liquid
24 suspension.

25 (g) One-half milliliter of lysergic acid diethylamide, or in the case
26 of blotter dosage units fifty dosage units.

27 (h) Two pounds of marijuana.

28 (i) For any combination consisting solely of those unlawful substances
29 listed in subdivisions (a) through (h) of this paragraph, an amount equal to
30 or in excess of the threshold amount, as determined by the application of
31 section 13-3420.

32 (j) For any unlawful substance not listed in subdivisions (a) through
33 (h) of this paragraph or any combination involving any unlawful substance not
34 listed in subdivisions (a) through (h) of this paragraph, a value of at least
35 one thousand dollars.

36 37. "Transfer" means furnish, deliver or give away.

37 38. "Vapor-releasing substance containing a toxic substance" means
38 paint or varnish dispensed by the use of aerosol spray, or any glue, which
39 releases vapors or fumes containing acetone, volatile acetates, benzene,
40 butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl
41 alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene,
42 volatile ketones, isophorone, chloroform, methylene chloride, mesityl oxide,
43 xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or diacetone
44 alcohol or isobutyl nitrite.

1 39. "Weight" unless otherwise specified includes the entire weight of
2 any mixture or substance that contains a detectable amount of an unlawful
3 substance. If a mixture or substance contains more than one unlawful
4 substance, the weight of the entire mixture or substance is assigned to the
5 unlawful substance that results in the greater offense. If a mixture or
6 substance contains lysergic acid diethylamide, the offense that results from
7 the unlawful substance shall be based on the greater offense as determined
8 by the entire weight of the mixture or substance or the number of blotter
9 dosage units. For the purposes of this paragraph, "mixture" means any
10 combination of substances from which the unlawful substance cannot be removed
11 without a chemical process.

12 40. "Wholesaler" means a person who in the usual course of business
13 lawfully supplies narcotic drugs, dangerous drugs, precursor chemicals
14 or regulated chemicals that he himself has not produced or prepared, but not
15 to a person for the purpose of consumption by the person, whether or not the
16 wholesaler has a permit that is issued pursuant to title 32, chapter
17 18. Wholesaler includes a person who sells, delivers or dispenses a
18 precursor chemical in an amount or under circumstances that would require
19 registration as a distributor of precursor chemicals under the federal act.

20 Sec. 13. Section 13-3406, Arizona Revised Statutes, is amended to
21 read:

22 13-3406. Possession, use, administration, acquisition, sale,
23 manufacture or transportation of prescription-only
24 drugs; classification

25 A. A person shall not knowingly:

26 1. Possess or use a prescription-only drug UNLESS THE PERSON OBTAINS
27 THE PRESCRIPTION-ONLY DRUG PURSUANT TO A VALID PRESCRIPTION OF A PRESCRIBER
28 WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 7, 11, 13, 14, 15, 16, 17, 21,
29 25 OR 29 OR IS SIMILARLY LICENSED IN ANOTHER STATE.

30 2. UNLESS THE PERSON HOLDS A LICENSE OR A PERMIT ISSUED PURSUANT TO
31 TITLE 32, CHAPTER 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 OR 29, possess a
32 prescription-only drug for sale.

33 3. UNLESS THE PERSON HOLDS A LICENSE OR A PERMIT ISSUED PURSUANT TO
34 TITLE 32, CHAPTER 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 OR 29, possess
35 equipment and chemicals for the purpose of manufacturing a prescription-only
36 drug.

37 4. UNLESS THE PERSON HOLDS A LICENSE OR A PERMIT ISSUED PURSUANT TO
38 TITLE 32, CHAPTER 18, manufacture a prescription-only drug.

39 5. Administer a prescription-only drug to another person whose
40 possession or use of the prescription-only drug violates any provision of
41 this section.

42 6. Obtain or procure the administration of a prescription-only drug
43 by fraud, deceit, misrepresentation or subterfuge.

1 7. UNLESS THE PERSON IS AUTHORIZED, transport for sale, import into
2 this state or offer to transport for sale or import into this state, sell,
3 transfer or offer to sell or transfer a prescription-only drug.

4 B. A person who violates:

5 1. Subsection A, paragraph 1, 3, 4, 5 or 6 is guilty of a class 1
6 misdemeanor.

7 2. Subsection A, paragraph 2 or 7 is guilty of a class 6 felony.

8 C. In addition to any other penalty prescribed by this title, the
9 court shall order a person who is convicted of a violation of any provision
10 of this section to pay a fine of one thousand dollars. A judge shall not
11 suspend any part or all of the imposition of any fine required by this
12 subsection.

13 D. A person who is convicted of a felony violation of a provision of
14 this section for which probation or release before the expiration of the
15 sentence imposed by the court is authorized is prohibited from using any
16 marijuana, dangerous drug, narcotic drug or prescription-only drug except as
17 lawfully administered by a practitioner and as a condition of any probation
18 or release shall be required to submit to drug testing administered under the
19 supervision of the probation department of the county or the state department
20 of corrections, as appropriate, during the duration of the term of probation
21 or before the expiration of the sentence imposed.

22 E. If a person who is convicted of a violation of a provision of
23 subsection A, paragraph 2 or 7 is granted probation, the court shall order
24 that as a condition of probation the person perform not less than two hundred
25 forty hours of community service with an agency or organization providing
26 counseling, rehabilitation or treatment for alcohol or drug abuse, an agency
27 or organization that provides medical treatment to persons who abuse
28 controlled substances, an agency or organization that serves persons who are
29 victims of crime or any other appropriate agency or organization.

30 Sec. 14. Section 13-3407, Arizona Revised Statutes, is amended to
31 read:

32 13-3407. Possession, use, administration, acquisition, sale,
33 manufacture or transportation of dangerous drugs;
34 classification

35 A. A person shall not knowingly:

36 1. Possess or use a dangerous drug.

37 2. Possess a dangerous drug for sale.

38 3. Possess equipment or chemicals, or both, for the purpose of
39 manufacturing a dangerous drug.

40 4. Manufacture a dangerous drug.

41 5. Administer a dangerous drug to another person.

42 6. Obtain or procure the administration of a dangerous drug by fraud,
43 deceit, misrepresentation or subterfuge.

1 7. Transport for sale, import into this state or offer to transport
2 for sale or import into this state, sell, transfer or offer to sell or
3 transfer a dangerous drug.

4 B. A person who violates:

5 1. Subsection A, paragraph 1 of this section is guilty of a class 4
6 felony. Unless the drug involved is lysergic acid diethylamide,
7 methamphetamine, amphetamine or phencyclidine or the person was previously
8 convicted of a felony offense or a violation of this section or section
9 13-3408, the court on motion of the state, considering the nature and
10 circumstances of the offense, for a person not previously convicted of any
11 felony offense or a violation of this section or section 13-3408 may enter
12 judgment of conviction for a class 1 misdemeanor and make disposition
13 accordingly or may place the defendant on probation in accordance with
14 chapter 9 of this title and refrain from designating the offense as a felony
15 or misdemeanor until the probation is successfully terminated. The offense
16 shall be treated as a felony for all purposes until the court enters an order
17 designating the offense a misdemeanor.

18 2. Subsection A, paragraph 2 of this section is guilty of a class 2
19 felony.

20 3. Subsection A, paragraph 3 of this section is guilty of a class 3
21 felony.

22 4. Subsection A, paragraph 4 of this section is guilty of a class 2
23 felony.

24 5. Subsection A, paragraph 5 of this section is guilty of a class 2
25 felony.

26 6. Subsection A, paragraph 6 of this section is guilty of a class 3
27 felony.

28 7. Subsection A, paragraph 7 of this section is guilty of a class 2
29 felony.

30 C. A person who is convicted of a violation of subsection A, paragraph
31 1, 3 or 6 and who has not previously been convicted of any felony or who has
32 not been sentenced pursuant to section 13-604 or any other law making the
33 convicted person ineligible for probation is eligible for probation.

34 D. If the aggregate amount of dangerous drugs involved in one offense
35 or all of the offenses that are consolidated for trial equals or exceeds the
36 statutory threshold amount, a person who is convicted of a violation of
37 subsection A, paragraph 2, 5 or 7 of this section is not eligible for
38 suspension of sentence, probation, pardon or release from confinement on any
39 basis until the person has served the sentence imposed by the court, the
40 person is eligible for release pursuant to section 41-1604.07 or the sentence
41 is commuted.

42 E. A person who is convicted of a violation of subsection A, paragraph
43 4 of this section is not eligible for suspension of sentence, probation,
44 pardon or release from confinement on any basis until the person has served

1 the sentence imposed by the court, the person is eligible for release
2 pursuant to section 41-1604.07 or the sentence is commuted.

3 F. IF A PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH
4 5 OF THIS SECTION, IF THE DRUG IS ADMINISTERED WITHOUT THE OTHER PERSON'S
5 CONSENT, IF THE OTHER PERSON IS UNDER EIGHTEEN YEARS OF AGE AND IF THE DRUG
6 IS FLUNITRAZEPAM, GAMMA HYDROXY BUTRATE OR KETAMINE HYDROCHLORIDE, THE
7 CONVICTED PERSON IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION,
8 PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS UNTIL THE PERSON HAS SERVED
9 THE SENTENCE IMPOSED BY THE COURT, THE PERSON IS ELIGIBLE FOR RELEASE
10 PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED.

11 ~~F.~~ G. In addition to any other penalty prescribed by this title, the
12 court shall order a person who is convicted of a violation of any provision
13 of this section to pay a fine of not less than one thousand dollars or three
14 times the value as determined by the court of the dangerous drugs involved
15 in or giving rise to the charge, whichever is greater, and not more than the
16 maximum authorized by chapter 8 of this title. A judge shall not suspend any
17 part or all of the imposition of any fine required by this subsection.

18 ~~G.~~ H. A person who is convicted of a violation of a provision of this
19 section for which probation or release before the expiration of the sentence
20 imposed by the court is authorized is prohibited from using any marijuana,
21 dangerous drug, narcotic drug or prescription-only drug except as lawfully
22 administered by a health care practitioner and as a condition of any
23 probation or release shall be required to submit to drug testing administered
24 under the supervision of the probation department of the county or the state
25 department of corrections, as appropriate, during the duration of the term
26 of probation or before the expiration of the sentence imposed.

27 ~~H.~~ I. If a person who is convicted of a violation of a provision of
28 this section is granted probation, the court shall order that as a condition
29 of probation the person perform not less than three hundred sixty hours of
30 community service with an agency or organization providing counseling,
31 rehabilitation or treatment for alcohol or drug abuse, an agency or
32 organization that provides medical treatment to persons who abuse controlled
33 substances, an agency or organization that serves persons who are victims of
34 crime or any other appropriate agency or organization.

35 Sec. 15. Section 13-3506.01, Arizona Revised Statutes, as added by
36 Laws 2001, chapter 94, section 3, is amended to read:

37 13-3506.01. Furnishing harmful items to minors; internet
38 activity; classification

39 A. It is unlawful for any person, with knowledge of the character of
40 the item involved, to intentionally or knowingly transmit or send over the
41 internet an item to a minor that is harmful to minors when the person has
42 knowledge or reason to know at the time of the transmission that a minor in
43 this state will receive the item.

44 B. It is unlawful for any person in this state, with knowledge of the
45 character of the item involved, to intentionally or knowingly transmit or

1 send over the internet an item to a minor that is harmful to minors when the
2 person has knowledge or reason to know at the time of the transmission that
3 a minor will receive the item.

4 C. Posting material ~~for reading or viewing~~ on an internet web site
5 does not constitute the act of transmitting or sending an item over the
6 internet.

7 D. In an action for a violation of this section, proof of any of the
8 following may give rise to an inference that the person knew or should have
9 known that the recipient of a transmission was a minor:

10 1. The name, account, profile, web page or address of the recipient
11 contained indicia that the recipient is a minor.

12 2. The recipient or another person previously notified the person by
13 any reasonable means that the recipient is a minor.

14 3. The recipient's electronic mail or web page contains indicia that
15 the address or domain name is the property of, or that the visual depiction
16 ultimately will be stored at, a school as defined in section 13-609.

17 E. It is not a defense to a prosecution for a violation of this
18 section that the recipient of the transmission was a peace officer posing as
19 a minor.

20 F. A violation of this section is a class 4 felony.

21 Sec. 16. Section 13-3551, Arizona Revised Statutes, is amended to
22 read:

23 13-3551. Definitions

24 In this chapter, unless the context otherwise requires:

25 1. "Communication service provider" has the same meaning prescribed
26 in section ~~13-3004~~ 13-3001.

27 2. "Computer" has the same meaning prescribed in section 13-2301,
28 subsection E.

29 3. "Computer system" has the same meaning prescribed in section
30 13-2301, subsection E.

31 4. "Exploitive exhibition" means the actual or simulated exhibition
32 of the genitals or pubic or rectal areas of any person for the purpose of
33 sexual stimulation of the viewer.

34 5. "MINOR" MEANS A PERSON OR PERSONS WHO WERE UNDER EIGHTEEN YEARS OF
35 AGE AT THE TIME A VISUAL DEPICTION WAS CREATED, ADAPTED OR MODIFIED.

36 ~~5-~~ 6. "Network" has the same meaning prescribed in section 13-2301,
37 subsection E.

38 ~~6-~~ 7. "Producing" means financing, directing, manufacturing, issuing,
39 publishing or advertising for pecuniary gain.

40 ~~7-~~ 8. "Remote computing service" has the same meaning prescribed in
41 section ~~13-3004~~ 13-3001.

42 ~~8-~~ 9. "Sexual conduct" means actual or simulated:

43 (a) Sexual intercourse, including genital-genital, oral-genital,
44 anal-genital or oral-anal, whether between persons of the same or opposite
45 sex.

1 (b) Penetration of the vagina or rectum by any object except when done
2 as part of a recognized medical procedure.

3 (c) Sexual bestiality.

4 (d) Masturbation, for the purpose of sexual stimulation of the viewer.

5 (e) Sadomasochistic abuse for the purpose of sexual stimulation of the
6 viewer.

7 (f) Defecation or urination for the purpose of sexual stimulation of
8 the viewer.

9 ~~9-~~ 10. "Simulated" means any depicting of the genitals or rectal
10 areas that gives the appearance of sexual conduct or incipient sexual
11 conduct.

12 ~~10-~~ 11. "Visual depiction" includes each visual image that is
13 contained in an undeveloped film, videotape or photograph or data stored in
14 any form and that is capable of conversion into a visual image.

15 Sec. 17. Section 13-3553, Arizona Revised Statutes, is amended to
16 read:

17 13-3553. Sexual exploitation of a minor; evidence; exemption;
18 classification

19 A. A person commits sexual exploitation of a minor by knowingly:

20 1. Recording, filming, photographing, developing or duplicating any
21 visual depiction in which ~~minors are~~ A MINOR IS engaged in exploitive
22 exhibition or other sexual conduct.

23 2. Distributing, transporting, exhibiting, receiving, selling,
24 purchasing, electronically transmitting, possessing or exchanging any visual
25 depiction in which ~~minors are~~ A MINOR IS engaged in exploitive exhibition or
26 other sexual conduct.

27 B. If any visual depiction of sexual exploitation of a minor is
28 admitted into evidence, the court shall seal that evidence at the conclusion
29 of any grand jury proceeding, hearing or trial.

30 C. Sexual exploitation of a minor is a class 2 felony and if the minor
31 is under fifteen years of age it is punishable pursuant to section 13-604.01.

32 Sec. 18. Section 13-3554, Arizona Revised Statutes, is amended to
33 read:

34 13-3554. Luring a minor for sexual exploitation; classification

35 A. A person commits luring a minor for sexual exploitation by offering
36 or soliciting sexual conduct with another person knowing or having reason to
37 know that the other person is a minor.

38 B. It is not a defense to a prosecution for a violation of this
39 section that the other person was a peace officer posing as a minor.

40 C. Luring a minor for sexual exploitation is a class 3 felony, and if
41 the minor is under fifteen years of age it is punishable pursuant to section
42 13-604.01, SUBSECTION I.

1 Sec. 19. Repeal

2 Section 13-3601, Arizona Revised Statutes, as amended by Laws 2000,
3 chapter 32, section 7, chapter 42, section 1 and chapter 361, section 3, is
4 repealed.

5 Sec. 20. Section 13-3601, Arizona Revised Statutes, as amended by Laws
6 2000, chapter 370, section 1, is amended to read:

7 13-3601. Domestic violence; definition; classification;
8 sentencing option; arrest and procedure for
9 violation; weapon seizure; notice; report; diversion

10 A. "Domestic violence" means any act which is a dangerous crime
11 against children as defined in section 13-604.01 or an offense defined in
12 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
13 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
14 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or
15 13-3623, if any of the following apply APPLIES:

16 1. The relationship between the victim and the defendant is one of
17 marriage or former marriage or of persons residing or having resided in the
18 same household.

19 2. The victim and the defendant have a child in common.

20 3. The victim or the defendant is pregnant by the other party.

21 4. The victim is related to the defendant or the defendant's spouse
22 by blood OR COURT ORDER as a parent, grandparent, child, grandchild, brother
23 or sister or by marriage as a parent-in-law, grandparent-in-law, STEPPARENT,
24 STEP-GRANDPARENT, stepchild, step-grandchild, brother-in-law or
25 sister-in-law.

26 5. The victim is a child who resides or has resided in the same
27 household as the defendant and is related by blood to a former spouse of the
28 defendant or to a person who resides or who has resided in the same household
29 as the defendant.

30 B. A peace officer may, with or without a warrant, arrest a person if
31 the officer has probable cause to believe that domestic violence has been
32 committed and the officer has probable cause to believe that the person to
33 be arrested has committed the offense, whether such offense is a felony or
34 a misdemeanor and whether such offense was committed within or without the
35 presence of the peace officer. In cases of domestic violence involving the
36 infliction of physical injury or involving the discharge, use or threatening
37 exhibition of a deadly weapon or dangerous instrument, the peace officer
38 shall arrest a person, with or without a warrant, if the officer has probable
39 cause to believe that the offense has been committed and the officer has
40 probable cause to believe that the person to be arrested has committed the
41 offense, whether such offense was committed within or without the presence
42 of the peace officer, unless the officer has reasonable grounds to believe
43 that the circumstances at the time are such that the victim will be protected
44 from further injury. Failure to make an arrest does not give rise to civil
45 liability except pursuant to section 12-820.02. In order to arrest both

1 parties, the peace officer shall have probable cause to believe that both
2 parties independently have committed an act of domestic violence. An act of
3 self-defense that is justified under chapter 4 of this title is not deemed
4 to be an act of domestic violence. The release procedures available under
5 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
6 applicable to arrests made pursuant to this subsection.

7 C. A peace officer may question the persons who are present to
8 determine if a firearm is present on the premises. On learning or observing
9 that a firearm is present on the premises, the peace officer may temporarily
10 seize the firearm if the firearm is in plain view or was found pursuant to
11 a consent to search and if the officer reasonably believes that the firearm
12 would expose the victim or another person in the household to a risk of
13 serious bodily injury or death. A firearm owned or possessed by the victim
14 shall not be seized unless there is probable cause to believe that both
15 parties independently have committed an act of domestic violence.

16 D. If a firearm is seized pursuant to subsection C of this section,
17 the peace officer shall give the owner or possessor of the firearm a receipt
18 for each seized firearm. The receipt shall indicate the identification or
19 serial number or other identifying characteristic of each seized firearm.
20 Each seized firearm shall be held for at least seventy-two hours by the law
21 enforcement agency that seized the firearm.

22 E. If a firearm is seized pursuant to subsection C of this section,
23 the victim shall be notified by a peace officer before the firearm is
24 released from temporary custody.

25 F. If there is reasonable cause to believe that returning a firearm
26 to the owner or possessor may endanger the victim, the person who reported
27 the assault or threat or another person in the household, the prosecutor
28 shall file a notice of intent to retain the firearm in the appropriate
29 superior, justice or municipal court. The prosecutor shall serve notice on
30 the owner or possessor of the firearm by certified mail. The notice shall
31 state that the firearm will be retained for not more than six months
32 following the date of seizure. On receipt of the notice, the owner or
33 possessor may request a hearing for the return of the firearm, to dispute the
34 grounds for seizure or to request an earlier return date. The court shall
35 hold the hearing within ten days after receiving the owner's or possessor's
36 request for a hearing. At the hearing, unless the court determines that the
37 return of the firearm may endanger the victim, the person who reported the
38 assault or threat or another person in the household, the court shall order
39 the return of the firearm to the owner or possessor.

40 G. A peace officer is not liable for any act or omission in the good
41 faith exercise of the officer's duties under subsections C, D, E and F of
42 this section.

43 H. Each indictment, information, complaint, summons or warrant that
44 is issued and that involves domestic violence shall state that the offense
45 involved domestic violence and shall be designated by the letters DV. A

1 domestic violence charge shall not be dismissed or a domestic violence
2 conviction shall not be set aside for failure to comply with this subsection.

3 I. A person arrested pursuant to subsection B of this section may be
4 released from custody in accordance with the Arizona rules of criminal
5 procedure or ANY other applicable statute. Any order for release, with or
6 without an appearance bond, shall include pretrial release conditions
7 necessary to provide for the protection of the alleged victim and other
8 specifically designated persons and may provide for additional conditions
9 which the court deems appropriate, including participation in any counseling
10 programs available to the defendant.

11 J. When a peace officer responds to a call alleging that domestic
12 violence has been or may be committed, the officer shall inform in writing
13 any alleged or potential victim of the procedures and resources available for
14 the protection of such victim including:

15 1. An order of protection pursuant to section 13-3602, an injunction
16 pursuant to section 25-315 and an injunction against harassment pursuant to
17 section 12-1809.

18 2. The emergency telephone number for the local police agency.

19 3. Telephone numbers for emergency services in the local community.

20 K. A peace officer is not civilly liable for noncompliance with
21 subsection J of this section.

22 L. An offense included in domestic violence carries the classification
23 prescribed in the section of this title in which the offense is classified.

24 M. If the defendant is found guilty of an offense included in domestic
25 violence and if probation is otherwise available for such THAT offense, the
26 court may, without entering a judgment of guilt and with the consent of the
27 defendant, defer further proceedings and place the defendant on probation or
28 intensive probation, as provided in this subsection. The terms and
29 conditions of probation or intensive probation shall include those necessary
30 to provide for the protection of the alleged victim and other specifically
31 designated persons and additional conditions and requirements which the court
32 deems appropriate, including imposition of a fine, incarceration of the
33 defendant in a county jail, payment of restitution, completion of a domestic
34 violence offender treatment program that is provided by a facility approved
35 by the department of health services or a probation department or any other
36 counseling or diversionary programs that do not involve domestic violence and
37 that are available to the defendant. On violation of a term or condition of
38 probation or intensive probation, the court may enter an adjudication of
39 guilt and proceed as otherwise provided for revocation of probation. On
40 fulfillment of the terms and conditions of probation or intensive probation,
41 the court shall discharge the defendant and dismiss the proceedings against
42 the defendant. This subsection does not apply in any case in which the
43 defendant has previously been found guilty under this section, or in which
44 charges under this section have previously been dismissed in accordance with
45 this subsection.

1 N. If a defendant is diverted pursuant to this section, the court
2 shall provide the following written notice to the defendant:

3 You have been diverted from prosecution for an offense included in
4 domestic violence. You are now on notice that:

5 1. If you successfully complete the terms and conditions of diversion,
6 the court will discharge you and dismiss the proceedings against you.

7 2. If you fail to successfully complete the terms and conditions of
8 diversion, the court may enter an adjudication of guilt and proceed as
9 provided by law.

10 O. If the defendant is found guilty of a first offense included in
11 domestic violence, the court shall provide the following written notice to
12 the defendant:

13 You have been convicted of an offense included in domestic
14 violence. You are now on notice that:

15 1. If you are convicted of a second offense included in domestic
16 violence, you may be placed on supervised probation and may be incarcerated
17 as a condition of probation.

18 ~~2. If you are convicted of a third or subsequent offense included in~~
19 ~~domestic violence, you will be sentenced to A THIRD OR SUBSEQUENT CHARGE MAY~~
20 ~~BE FILED AS A FELONY AND A CONVICTION FOR THAT OFFENSE SHALL RESULT IN a term~~
21 ~~of incarceration.~~

22 P. The failure or inability of the court to provide the notice
23 required under subsections N and O of this section does not preclude the use
24 of the prior convictions for any purpose otherwise permitted.

25 Sec. 21. Title 13, chapter 38, Arizona Revised Statutes, is amended
26 by adding article 31, to read:

27 ARTICLE 31. COMPLAINTS

28 13-4261. Law enforcement officer; affidavit; definition

29 A. IF A PROSECUTOR CHARGES A CRIMINAL OFFENSE BY COMPLAINT, THE
30 PROSECUTOR MAY ATTACH AN AFFIDAVIT OF A LAW ENFORCEMENT OFFICER OR EMPLOYEE
31 THAT SWEARS ON INFORMATION AND BELIEF TO THE ACCURACY OF THE COMPLAINT IN
32 LIEU OF MAKING AN OATH BEFORE A MAGISTRATE.

33 B. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS A WRITTEN
34 STATEMENT OF THE ESSENTIAL FACTS CONSTITUTING A PUBLIC OFFENSE.

35 Sec. 22. Section 13-4401, Arizona Revised Statutes, is amended to
36 read:

37 13-4401. Definitions

38 In this chapter, unless the context otherwise requires:

39 1. "Accused" means a person who has been arrested for committing a
40 criminal offense and who is held for an initial appearance or other
41 proceeding before trial.

42 2. "Appellate proceeding" means a contested oral argument that is held
43 in open court before the state court of appeals, the state supreme court, a
44 federal court of appeals or the United States supreme court.

1 3. "Arrest" means the actual custodial restraint of a person or the
2 person's submission to custody.

3 4. "Court" means all state, county and municipal courts in this state.

4 5. "Crime victim advocate" means a person who is employed or
5 authorized by a public entity or a private entity that receives public
6 funding primarily to provide counseling, treatment or other supportive
7 assistance to crime victims.

8 6. "Criminal offense" means conduct that gives a peace officer or
9 prosecutor probable cause to believe that a felony or that a misdemeanor
10 involving physical injury, the threat of physical injury or a sexual offense
11 has occurred.

12 7. "Criminal proceeding" means any hearing, argument or other matter
13 that is scheduled by and held before a trial court but does not include any
14 deposition, lineup, grand jury proceeding or other matter that is not held
15 in the presence of the court.

16 8. "Custodial agency" means any law enforcement officer or agency, a
17 sheriff or municipal jailer, the state department of corrections or a secure
18 mental health facility that has custody of a person who is arrested or in
19 custody for a criminal offense.

20 9. "Defendant" means a person or entity that is formally charged by
21 complaint, indictment or information of committing a criminal offense.

22 10. "Final disposition" means the ultimate termination of the criminal
23 prosecution of a defendant by a trial court, including dismissal, acquittal
24 or imposition of a sentence.

25 11. "Immediate family" means a victim's spouse, parent, child, sibling,
26 grandparent or lawful guardian.

27 12. "Lawful representative" means a person who is designated by the
28 victim or appointed by the court and who acts in the best interests of the
29 victim.

30 13. "Post-arrest release" means the discharge of the accused from
31 confinement on recognizance, bond or other condition.

32 14. "Post-conviction release" means parole, work furlough, community
33 supervision, probation if the court waived community supervision pursuant to
34 section 13-603, home arrest or any other permanent, conditional or temporary
35 discharge from confinement in the custody of the state department of
36 corrections or a sheriff or from confinement in a municipal jail or a secure
37 mental health facility.

38 15. "Post-conviction relief proceeding" means a contested argument or
39 evidentiary hearing that is held in open court and that involves a request
40 for relief from a conviction or sentence.

41 16. "Prisoner" means a person who has been convicted of a criminal
42 offense against a victim and who has been sentenced to the custody of the
43 sheriff, the state department of corrections, a municipal jail or a secure
44 mental health facility.

1 17. "Release" means no longer in the custody of a custodial agency and
2 includes transfer from one custodial agency to another custodial agency.

3 18. "Rights" means any right that is granted to the victim by the laws
4 of this state.

5 19. "Victim" means a person against whom the criminal offense has been
6 committed, or if the person is killed or incapacitated, the person's spouse,
7 parent, child IMMEDIATE FAMILY or other lawful representative, except if the
8 person is in custody for an offense or is the accused.

9 Sec. 23. Section 13-4416, Arizona Revised Statutes, is amended to
10 read:

11 13-4416. Notice of release, discharge or escape from a mental
12 health treatment agency

13 A. If the victim has made a request for notice, a mental health
14 treatment agency shall mail to the victim at least ten days before the
15 release or discharge of the person accused or convicted of committing a
16 criminal offense against the victim, notice of the release or discharge of
17 the person who is placed by court order in a mental health treatment agency
18 pursuant to section 13-3994, 31-226, 31-226.01, 36-540.01, or 36-541.01 OR
19 36-3707.

20 B. A mental health treatment agency shall mail to the victim
21 immediately after the escape or subsequent readmission of the person accused
22 or convicted of committing a criminal offense against the victim, notice of
23 the escape or subsequent readmission of the person who is placed by court
24 order in a mental health treatment agency pursuant to section 13-3994,
25 31-226, 31-226.01, 36-540.01, or 36-541.01 OR 36-3707.

26 Sec. 24. Title 13, chapter 40, Arizona Revised Statutes, is amended
27 by adding section 13-4439, to read:

28 13-4439. Right to leave work; scheduled proceedings;
29 counseling; employment rights; nondiscrimination;
30 confidentiality; definition

31 A. AN EMPLOYER WHO HAS FIFTY OR MORE EMPLOYEES FOR EACH WORKING DAY
32 IN EACH OF TWENTY OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR
33 YEAR, AND ANY AGENT OF THAT EMPLOYER, SHALL ALLOW AN EMPLOYEE WHO IS A VICTIM
34 OF A CRIME TO LEAVE WORK TO EXERCISE THE EMPLOYEE'S RIGHT TO BE PRESENT AT
35 A PROCEEDING PURSUANT TO SECTIONS 13-4414, 13-4420, 13-4421, 13-4422,
36 13-4423, 13-4426, 13-4427 AND 13-4436.

37 B. AN EMPLOYER MAY NOT DISMISS AN EMPLOYEE WHO IS A VICTIM OF A CRIME
38 BECAUSE THE EMPLOYEE EXERCISES THE RIGHT TO LEAVE WORK PURSUANT TO SUBSECTION
39 A OF THIS SECTION.

40 C. AN EMPLOYER IS NOT REQUIRED TO COMPENSATE AN EMPLOYEE WHO IS A
41 VICTIM OF A CRIME WHEN THE EMPLOYEE LEAVES WORK PURSUANT TO SUBSECTION A OF
42 THIS SECTION.

43 D. IF AN EMPLOYEE LEAVES WORK PURSUANT TO SUBSECTION A OF THIS
44 SECTION, THE EMPLOYEE MAY ELECT TO USE OR AN EMPLOYER MAY REQUIRE THE

1 EMPLOYEE TO USE THE EMPLOYEE'S ACCRUED PAID VACATION, PERSONAL LEAVE OR SICK
2 LEAVE.

3 E. AN EMPLOYEE WHO IS A VICTIM OF A CRIME SHALL NOT LOSE SENIORITY OR
4 PRECEDENCE WHILE ABSENT FROM EMPLOYMENT PURSUANT TO SUBSECTION A OF THIS
5 SECTION.

6 F. BEFORE AN EMPLOYEE MAY LEAVE WORK PURSUANT TO SUBSECTION A OF THIS
7 SECTION, THE EMPLOYEE SHALL DO ALL OF THE FOLLOWING:

8 1. PROVIDE THE EMPLOYER WITH A COPY OF THE FORM PROVIDED TO THE
9 EMPLOYEE BY THE LAW ENFORCEMENT AGENCY PURSUANT TO SECTION 13-4405,
10 SUBSECTION A OR A COPY OF THE INFORMATION THE LAW ENFORCEMENT AGENCY PROVIDES
11 TO THE EMPLOYEE PURSUANT TO SECTION 13-4405, SUBSECTION E.

12 2. IF APPLICABLE, GIVE THE EMPLOYER A COPY OF THE NOTICE OF EACH
13 SCHEDULED PROCEEDING THAT IS PROVIDED TO THE VICTIM BY THE AGENCY THAT IS
14 RESPONSIBLE FOR PROVIDING NOTICE TO THE VICTIM.

15 G. IT IS UNLAWFUL FOR AN EMPLOYER OR AN EMPLOYER'S AGENT TO REFUSE TO
16 HIRE OR EMPLOY, TO BAR OR TO DISCHARGE FROM EMPLOYMENT OR TO DISCRIMINATE
17 AGAINST AN INDIVIDUAL IN COMPENSATION OR OTHER TERMS, CONDITIONS OR
18 PRIVILEGES OF EMPLOYMENT BECAUSE THE INDIVIDUAL LEAVES WORK PURSUANT TO
19 SUBSECTION A OF THIS SECTION.

20 H. EMPLOYERS SHALL KEEP CONFIDENTIAL RECORDS REGARDING THE EMPLOYEE'S
21 LEAVE PURSUANT TO THIS SECTION.

22 I. AN EMPLOYER MAY LIMIT THE LEAVE PROVIDED UNDER THIS SECTION IF THE
23 EMPLOYEE'S LEAVE CREATES AN UNDUE HARDSHIP TO THE EMPLOYER'S BUSINESS.

24 J. THE PROSECUTOR SHALL INFORM THE VICTIM OF THE VICTIM'S RIGHTS
25 PURSUANT TO THIS SECTION. A VICTIM MAY NOTIFY THE PROSECUTOR IF EXERCISING
26 THE VICTIM'S RIGHT TO LEAVE UNDER THIS SECTION WOULD CREATE AN UNDUE HARDSHIP
27 FOR THE VICTIM'S EMPLOYER. THE PROSECUTOR SHALL COMMUNICATE THE NOTICE TO
28 THE COURT DURING THE SCHEDULING OF PROCEEDINGS WHERE THE VICTIM HAS THE RIGHT
29 TO BE PRESENT. THE COURT SHALL CONTINUE TO TAKE THE VICTIM'S SCHEDULE INTO
30 CONSIDERATION WHEN SCHEDULING A PROCEEDING PURSUANT TO SUBSECTION A OF THIS
31 SECTION.

32 K. FOR PURPOSES OF THIS SECTION, "UNDUE HARDSHIP" MEANS A SIGNIFICANT
33 DIFFICULTY AND EXPENSE TO A BUSINESS AND INCLUDES THE CONSIDERATION OF THE
34 SIZE OF THE EMPLOYER'S BUSINESS AND THE EMPLOYER'S CRITICAL NEED OF THE
35 EMPLOYEE.

36 Sec. 25. Section 15-712, Arizona Revised Statutes, is amended to read:

37 15-712. Instruction on alcohol, tobacco, narcotic drugs,
38 marijuana, date rape drugs and other dangerous drugs;
39 chemical abuse prevention programs; definitions

40 A. Instruction on the nature and harmful effects of alcohol, tobacco,
41 narcotic drugs, marijuana, DATE RAPE DRUGS and other dangerous drugs on the
42 human system and instruction on the laws related to the control of these
43 substances and the nonuse and prevention of use and abuse of alcohol,
44 tobacco, narcotic drugs, marijuana, DATE RAPE DRUGS and other dangerous drugs
45 may be included in the courses of study in common and high schools, with

1 emphasis on grades four through nine. Instruction on the nature and harmful
2 effects of alcohol, tobacco, narcotic drugs, marijuana, DATE RAPE DRUGS and
3 other dangerous drugs on a human fetus may be included in the courses of
4 study in grades six through twelve. The instruction may be integrated into
5 existing health, science, citizenship or similar studies and shall meet the
6 criteria for chemical abuse prevention education programs developed pursuant
7 to subsection C of this section.

8 B. At the request of a school district, the department of education
9 shall provide technical assistance to school districts that choose to
10 implement programs to prevent chemical abuse.

11 C. The department of education and the department of health services,
12 in consultation with the committee established pursuant to section 41-617,
13 shall establish an interagency committee to coordinate their assistance to
14 school districts.

15 D. The state board of education may accept gifts and grants and shall
16 distribute them and monies appropriated for chemical abuse prevention
17 programs to school districts to assist with the costs of programs designed
18 to prevent chemical abuse by pupils in kindergarten programs and grades one
19 through twelve. School districts which have approved chemical abuse
20 prevention policies and procedures as prescribed in section 15-345 are
21 eligible for a maximum of one dollar for each pupil or one thousand dollars,
22 whichever is more. If sufficient monies are not available to meet all
23 requests, the state board shall determine which school districts to fund
24 based on need, availability of other programs or sources of revenue and the
25 likelihood of the school district's proposed program successfully meeting
26 needs identified by the school district. A school district shall include the
27 monies it receives for chemical abuse prevention programs under this section
28 in the special projects section of the budget as provided in section 15-903,
29 subsection F.

30 E. For the purpose of this section,:

31 1. "DATE RAPE DRUG" MEANS A DRUG PRESCRIBED IN SECTION 13-3401,
32 PARAGRAPH 30, SUBDIVISIONS (f) THROUGH (m).

33 2. ~~The definitions of "Narcotic drug", "marijuana" and "dangerous~~
34 ~~drug" HAVE THE SAME MEANING prescribed in section 13-3401 are applicable.~~

35 Sec. 26. Section 22-372, Arizona Revised Statutes, is amended to read:

36 22-372. Bond on appeal; stay of sentence

37 A. Execution of the sentence shall not be stayed unless the defendant
38 executes a bond with sureties, in an amount fixed by a justice of the peace
39 or municipal judge of the court in which the judgment was rendered and files
40 the bond with the court. The bond shall be approved by the justice of the
41 peace or municipal judge. ~~The bond shall not exceed the maximum fine which~~
42 ~~could be imposed, plus any applicable surcharges and assessments.~~

43 B. The condition of the bond shall be that the defendant prosecute the
44 appeal and pay any fine and surrender to proper authorities in execution of
45 any imprisonment imposed by the superior court on the appeal.

1 Sec. 27. Section 23-1501, Arizona Revised Statutes, is amended to
2 read:

3 23-1501. Severability of employment relationships; protection
4 from retaliatory discharges; exclusivity of
5 statutory remedies in employment

6 The public policy of this state is that:

7 1. The employment relationship is contractual in nature.

8 2. The employment relationship is severable at the pleasure of either
9 the employee or the employer unless both the employee and the employer have
10 signed a written contract to the contrary setting forth that the employment
11 relationship shall remain in effect for a specified duration of time or
12 otherwise expressly restricting the right of either party to terminate the
13 employment relationship. Both the employee and the employer must sign this
14 written contract, or this written contract must be set forth in the
15 employment handbook or manual or any similar document distributed to the
16 employee, if that document expresses the intent that it is a contract of
17 employment, or this written contract must be set forth in a writing signed
18 by the party to be charged. Partial performance of employment shall not be
19 deemed sufficient to eliminate the requirements set forth in this
20 paragraph. Nothing in this paragraph shall be construed to affect the rights
21 of public employees under the Constitution of Arizona and state and local
22 laws of this state or the rights of employees and employers as defined by
23 a collective bargaining agreement.

24 3. An employee has a claim against an employer for termination of
25 employment only if one or more of the following circumstances have occurred:

26 (a) The employer has terminated the employment relationship of an
27 employee in breach of an employment contract, as set forth in paragraph 2 of
28 this section, in which case the remedies for the breach are limited to the
29 remedies for a breach of contract.

30 (b) The employer has terminated the employment relationship of an
31 employee in violation of a statute of this state. If the statute provides
32 a remedy to an employee for a violation of the statute, the remedies provided
33 to an employee for a violation of the statute are the exclusive remedies for
34 the violation of the statute or the public policy set forth in or arising out
35 of the statute, including the following:

36 (i) The civil rights act prescribed in title 41, chapter 9.

37 (ii) The occupational safety and health act prescribed in chapter 2,
38 article 10 of this title.

39 (iii) The statutes governing the hours of employment prescribed in
40 chapter 2 of this title.

41 (iv) The agricultural employment relations act prescribed in chapter
42 8, article 5 of this title.

43 All definitions and restrictions contained in the statute also apply to any
44 civil action based on a violation of the public policy arising out of the
45 statute. If the statute does not provide a remedy to an employee for the

1 violation of the statute, the employee shall have the right to bring a tort
2 claim for wrongful termination in violation of the public policy set forth
3 in the statute.

4 (c) The employer has terminated the employment relationship of an
5 employee in retaliation for any of the following:

6 (i) The refusal by the employee to commit an act or omission that
7 would violate the Constitution of Arizona or the statutes of this state.

8 (ii) The disclosure by the employee in a reasonable manner that the
9 employee has information or a reasonable belief that the employer, or an
10 employee of the employer, has violated, is violating or will violate the
11 Constitution of Arizona or the statutes of this state to either the employer
12 or a representative of the employer who the employee reasonably believes is
13 in a managerial or supervisory position and has the authority to investigate
14 the information provided by the employee and to take action to prevent
15 further violations of the Constitution of Arizona or statutes of this state
16 or an employee of a public body or political subdivision of this state or any
17 agency of a public body or political subdivision.

18 (iii) The exercise of rights under the workers' compensation statutes
19 prescribed in chapter 6 of this title.

20 (iv) Service on a jury as protected by section 21-236.

21 (v) The exercise of voting rights as protected by section 16-1012.

22 (vi) The exercise of free choice with respect to nonmembership in a
23 labor organization as protected by section 23-1302.

24 (vii) Service in the national guard or armed forces as protected by
25 sections 26-167 and 26-168.

26 (viii) The exercise of the right to be free from the extortion of fees
27 or gratuities as a condition of employment as protected by section 23-202.

28 (ix) The exercise of the right to be free from coercion to purchase
29 goods or supplies from any particular person as a condition of employment as
30 protected by section 23-203.

31 (x) THE EXERCISE OF A VICTIM'S LEAVES RIGHT AS PROVIDED IN SECTIONS
32 8-420 AND 13-4439.

33 (d) In the case of a public employee, if the employee has a right to
34 continued employment under the United States Constitution, the Arizona
35 Constitution, Arizona Revised Statutes, any applicable regulation, policy,
36 practice, or contract of the state, any subdivision of the state or other
37 public entity, or any ordinance of any political subdivision of the state.

38 Sec. 28. Section 31-403, Arizona Revised Statutes, is amended to read:

39 31-403. Petition for review of sentence; domestic violence

40 A. A person who was convicted of a violation of title 13, chapters 10
41 and 11 OR CHAPTER 11 before September 30, 1992 may petition the board of
42 executive clemency to review the sentence imposed if all of the following
43 apply:

44 1. The person was suffering from the battered persons syndrome as a
45 result of the victim's acts of violence against the person.

1 2. There were at least three corroborated acts of domestic violence
2 involving offenses defined in sections 13-1201 through 13-1204 that were
3 committed against the person by the victim before the offense for which the
4 person was convicted.

5 3. The victim was the only individual who suffered death or serious
6 physical injury during the commission of the offense.

7 4. The person committed the offense against the victim as a direct
8 result of the past acts of domestic violence by the victim as set forth in
9 paragraph 2.

10 5. The person applies for a sentence review within ninety days after
11 the state department of corrections posts, mails or broadcasts notice
12 pursuant to subsection C of this section.

13 B. The petition shall state that the person meets the eligibility
14 requirements for review prescribed by subsection A of this section.

15 C. The state department of corrections shall establish a procedure for
16 providing notice to inmates of the eligibility requirements for sentence
17 review and of the ninety day petition deadline prescribed by subsection A of
18 this section. The state department of corrections shall provide the notice
19 prescribed by this subsection by ~~December~~ OCTOBER 31, 2000 2001.

20 D. If the board of executive clemency in its sole discretion
21 determines the petition to be sufficient, the board shall hold a hearing at
22 which the victim's family, the prosecutor and the sentencing judge are given
23 notice and an opportunity to be heard. After the hearing the board may
24 recommend reduction of sentence to the governor if the board determines that
25 the person meets all of the requirements in subsection A of this section by
26 clear and convincing evidence and the board determines that a substantial
27 probability exists that if the person is released, the person will conform
28 the person's conduct to the requirements of the law.

29 E. A person may not appeal a decision by the board of executive
30 clemency pursuant to this section.

31 F. The board of executive clemency shall complete all reviews brought
32 pursuant to this section by December 31, 2001 2002.

33 Sec. 29. Laws 2000, chapter 42, section 6 is amended to read:

34 Sec. 6. Delayed repeal

35 Section 31-403, Arizona Revised Statutes, as added by this act, is
36 repealed from and after January 31, 2002 2003.

APPROVED BY THE GOVERNOR MAY 4, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2001.

Passed the House March 13, 2001,

by the following vote: 33 Ayes,

24 Nays, 3 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 23, 2001,

by the following vote: 27 Ayes,

0 Nays, 2 Not Voting

[Signature] 1 Vacancy
President of the Senate

Charmian Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2223

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 30, 2001,

by the following vote: 36 Ayes,

22 Nays, 2 Not Voting

Jake Flaherty
Speaker of the House
Norman L. Moore
Pro Tempore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2001,

at 3:30 o'clock P M.

Sandra D'Amico
Secretary to the Governor

Approved this 4 day of

May, 2001,

at 11:00 o'clock A M.

Gene Herlihy
Governor of Arizona

H.B. 2223

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2001,

at 4:34 o'clock P M.

Robert D. Boyles
Secretary of State